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this_____day of August, 1929.

_____

Attorney for Petitioner.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 269

ROBERT G. MEADOWS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 29, 1929

CERTIORARI GRANTED JANUARY 6, 1930

(34,400)

(34,400)

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

8156

ROBERT G. MEADOWS, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant

PETITION—Filed Jun. 18, 1926.

Comes now the above entitled Plaintiff, by his Attorney, S. R. Owens, and for a cause of action against the defendant, petitions and alleges:

1

That he is a citizen of the United States and of the State of Colorado, and resides at Fitzsimons, Colorado.

2

That the Plaintiff enlisted in the United States Army and served therein in the war against Germany, known as the World War. That the Plaintiff's services in said Army consists of the following enlistments, to-wit: enlisted March 31, 1914, and was given honorable discharge April 2, 1919; reinlisted April 3, 1919, and was given an honorable dis- [fol. 2] charge April 2, 1922; reenlisted in said army April 3, 1922 and was given a surgeon's Certificate of Disability from said army under date of August 2, 1923, on account of pulmonary tuberculosis.

3

That during the time of said enlistment and pursuant to the terms of the Act of Congress of October 6, 1917, relating to War Risk Insurance, the Plaintiff applied for insurance against death, and permanent and total disability and was issued a policy in the amount of $10,000.

4

That on or about February 1, 1920, the Plaintiff converted $3,000 of the $10,000 policy to a twenty-payment life policy, and allowed the remaining $7,000 of said Insurance to lapse.

5

That on or about the 5th day of March, 1923, the Plaintiff made application to the Defendant for the re-instatement and conversion of the remaining $7,000 of Insurance of the policy mentioned aforesaid and tendered the necessary premiums, and interest therefor, to-wit, $191.13, in accordance with the terms of War Risk Insurance Act and any amendments thereto, particularly Proviso 4 of Section 408 of the War Risk Insurance Act. That at the time said application was made, the Plaintiff was suffering from a disability, to-wit: tuberculosis (pulmonary) of a degree less than permanent and total disability.

6

That said application for the re-instatement and conversion of said $7,000 of insurance on said policy was rejected by the U. S. Veteran's Bureau, by letter from said Bureau, which is in words and figures as follows:

United States Veterans Bureau, Washington, August 6, 1925

(Emblem)

In Reply Refer to FABA

C—636 684

Mr. Robert G. Meadows, Fitzsimons General Hospital, Fitzsimons, Colorado.

Dear Sir: Receipt is acknowledged of your letter of July 31, 1925, regarding the insurance status of your case.

[fol. 3] In reply thereto please be advised that at the time the application for reinstatement and conversion of the $7,000 insurance was submitted, the evidence was sufficient,

in the opinion of the Officials of the Bureau, to show that you were permanently and totally disabled. Accordingly, your application for reinstatement and conversion was rejected.

A subsequent decision of the Board of Appeals holds that at that time the disability was not in fact shown to be permanent and total. However, since rejection was made you have been declared permanently and totally disabled, and reinstatement cannot be effected under existing legislation at this time.

All future communications relative to this case should bear the number C-636 684.

For the director,

Charles E. Mulhearn, Assistant Director.

7

That the Defendant erroneously and contrary to the terms of War Risk Insurance Act, and amendments thereto, rejected and refused the Plaintiff's application aforesaid. That in accordance with the terms of said Act, Plaintiff was, and is entitled to the reinstatement and conversion of the remaining $7,000 of the said Insurance Policy, effective March 5, 1923, and he again offers and stands willing, ready and able to pay the necessary premiums as provided by law for the reinstatement and conversion of said policy aforesaid. That the Plaintiff has been permanently and totally disabled since August 3, 1923, and not at any date prior to that time, and is entitled to receive benefits on said $7,000 insurance, in the sum of $40.25 per month since August 3, 1923.

Wherefore Plaintiff prays judgment against the Defendant directing it to reinstate and convert the remaining $7,000 of his Insurance Policy that he allowed to lapse on or about October 1, 1920, upon (his) tendering the necessary premiums therefor, and for the monthly benefits on said policy in the sum of $40.25 per month for each and every month since August 3, 1923, which totals $1384.00, and such other and further relief that the Court may deem proper in the premises.

S. *D.* Owens, Atty. for Plaintiff.

[fol. 4] *Duly sworn to by Robert G. Meadows. Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED PETITION—Filed Aug. 21, 1926

Comes now the above entitled plaintiff by his attorney, and by leave of court first had and obtained files this, his amended petition, and alleges:

1

That he is a citizen of the United States and of the State of Colorado, and resides at Fitzsimons, Colorado.

2

That the plaintiff enlisted in the United States Army and served therein in the war against Germany, known as the World War. That the plaintiff's service in said Army consists of the following enlistments, to-wit: enlisted March 31, 1914, and was given honorable discharge April 2, 1919; re-enlisted April 3, 1919, and was given an honorable discharge April 2, 1922; re-enlisted in said Army April 3, 1922 and was given a surgeon's certificate of disability from said army under date of August 2, 1923, on account of pul- [fol. 5] monary tuberculosis, and is receiving compensation from the U. S. Veterans' Bureau therefor.

3

That during the time of his said enlistment and pursuant to the terms of the Act of Congress of October 6, 1917, relating to War Risk Insurance, the plaintiff applied for insurance against death, and permanent and total disability, and was issued a policy in the amount of $10,000.

4

That on or about February 1, 1920, the plaintiff converted $3.000 of the $10,000 policy to a twenty-payment life policy and allowed the remaining $7,000 of said insurance to lapse.

5

Feb. 21st,

That on or about the 5th day of March, 1923, the plaintiff made a written application to the defendant for the re-

instatement and conversion of the remaining $7,000 of insurance of the policy mentioned aforesaid, and tendered the necessary premiums and interest therefor, to-wit: $191.13. That in making the application aforesaid, he complied with any and all the terms of the War Risk Insurance Act and the amendments thereto, and any and all U. S. Veterans' Bureau rules and regulations pertaining to such application. That at the time said application was made, the plaintiff was suffering from a disability, to-wit, tuberculosis (pulmonary) of a degree less than permanent and total disability.

6

That said application for the re-instatement and conversion of said $7,000 of insurance on said policy was rejected by the Directors of the said U. S. Veterans' Bureau, and the U. S. Veterans' Bureau and the Director thereof refused and still refuses to allow same.

7

That the defendant erroneously and contrary to the terms of the War Risk Insurance Act, and amendments thereto, rejected and refused the plaintiff's application aforesaid. That in accordance with the terms of said Act, plaintiff was and is entitled to the reinstatement and conversion of the remaining $7,000 of the said insurance policy effective March 5, 1923, and he again offers and stands willing, ready and able to pay the necessary premiums as provided by law for the reintatement and conversion of said policy [fol. 6] aforesaid. That the plaintiff has been permanently and totally disabled since August 3, 1923, and not at any date prior to that time, and is entitled to receive benefits on said $7,000 insurance, in the sum of $40.25 per month since August 3, 1923.

Wherefore, plaintiff prays judgment against the defendant directing it to re-instate and convert the remaining $7,000 of his insurance policy that he allowed to lapse on or about October 1, 1920, upon (his) tendering the necessary premiums therefore, and for the monthly benefits, on said policy in the sum of $40.25 per month for each and every month since August 3, 1923, which totals $1,384.00, and such

other and further relief that the Court may deem proper in the premises.

S. R. Owens.

Duly sworn to by Robert G. Meadows. Jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

ANSWER TO AMENDED PETITION—Filed Jan. 4, 1927

Comes now the above defendant, the United States of America, by George Stephan, United States Attorney for the District of Colorado, and R. H. Blackman, Assistant United States Attorney for the District of Colorado, and in answer to plaintiff's amended petition filed herein, alleges:

I

That defendant neither admits nor denies that plaintiff is a citizen of the United States, and of the State of Colorado, but demands strict proof of said allegation.

II

[fol. 7] That defendant admits the allegations contained in paragraphs 2, 3, and 4, of said amended petition.

III

Answering paragraph 5, of said amended petition, defendant admits that on or about the 5th day of March, 1923, (the correct date being February 21, A. D. 1923) plaintiff made application to the defendant for reinstatement of the remaining $7,000 of his War Risk Term Insurance, and that he tendered this with a sum of money, in payment of the premiums in arrears, and interest thereon, in accordance with the terms of the War Risk Insurance Act, and amendments thereto, particularly the provisions of Section 408 of the War Risk Insurance Act. Defendant denies that in making such application, the plaintiff complied with "any and all U. S. Veterans' Bureau rules and regulations pertaining to such application." Defendant denies that "at the time said application was made, the plaintiff was

suffering from a disability, to-wit, tuberculosis (pulmonary), of a degree less than permanent and total disability." Defendant alleges that at the time the said application for reinstatement was submitted, and for a considerable period of time prior thereto, to-wit, from November 28, A. D. 1922, the plaintiff was permanently and totally disabled.

IV

Answering paragraph 6, of said amended petition, defendant admits that the application for reinstatement of the $7,000 War Risk Term Insurance was rejected by the United States Veterans' Bureau, and that the United States Veterans' Bureau refused, and still refuses to allow same.

V

Answering paragraph 7 of said amended petition, defendant denies each and every allegation thereof.

Wherefore, defendant prays that said amended petition be dismissed, and that defendant go hence with its costs in this behalf expended.

George Stephan, United States Attorney for the District of Colorado. R. H. Blackman, Assistant United States Attorney for the District of Colorado.

[fol. 8] *Duly sworn to by R. H. Blackman. Jurat omitted in printing.*

In United States District Court

Stipulation Waiving Jury—Filed July 28, 1927

Trial by jury in the above-entitled matter is hereby waived by both parties hereto, and it is hereby stipulated and agreed that the issues may be tried and determined by the Court.

S. R. Owens, Attorney for Plaintiff. R. H. Blackman, Attorney for Defendant.

IN UNITED STATES DISTRICT COURT

[Title omitted]

MINUTE ENTRY—July 28, 1927

At this day comes the plaintiff by S. R. Owens, Esquire, his attorney and the defendant by F. C. Northcutt, Esquire, [fol. 9] its attorney also comes; and this case comes on now to be tried to the court without a jury pursuant to a written stipulation thereto herein filed. And thereupon, comes the evidence; and the court having heard the evidence produced herein and the arguments of counsel, doth take the matter under advisement.

IN UNITED STATES DISTRICT COURT

MOTION FOR NEW TRIAL—Filed September 21, 1927

Comes now the defendant, The United States of America, by George Stephan, United States Attorney for the District of Colorado, and respectfully moves the Court for an order granting and directing that a new trial be had herein, for the reasons following:

I

The Court erred in finding that the plaintiff herein complied with the requirements for reinstatement prescribed by the rules and regulations promulgated by the United States Veterans Bureau, and prescribed by the War Risk Insurance Act.

II

That the Court erred in finding that the plaintiff herein, was not totally and permanently disabled at the time plaintiff applied for reinstatement of his insurance.

III

That the Court erred in finding that the plaintiff herein, during his lifetime, submitted proof satisfactory to the Director of the United States Veterans Bureau showing the service origin of the disability or aggravation thereof, and

that the applicant plaintiff herein was not totally and permanently disabled.

IV

That the Court erred in finding that the finding of the Director of the United States Veterans Bureau as to the plaintiff's condition of health was not conclusive, and was subject to review.

V

That the finding of the Court that the plaintiff herein was not totally and permanently disabled at the time of his application for reinstatement of his insurance is contrary to the law.

VI

[fol. 10] That the finding of the Court that the plaintiff herein was not totally and permanently disabled at the time of his application for reinstatement of his insurance is contrary to the weight of the evidence.

V

That this Court is without jurisdiction to determine the condition of the health of the plaintiff at the time application for reinstatement of War Risk Insurance was made.

VI

That this Court is without jurisdiction to enter any order herein requiring the Director of the United States Veterans Bureau, or any other office of the Government, to take affirmative action, or to pay an amount of money to the plaintiff herein.

Wherefore, defendant prays that the findings of court herein be set aside, and that a new trial be granted herein.

George Stephan, United States Attorney for the District of Colorado. R. H. Blackman, Assistant United States Attorney for the District of Colorado. Richard A. Toomey, Regional Attorney, Colorado Regional Office, U. S. V. B. L. A. Lawlor, Trial Attorney, U. S. Veterans Bureau. Forrest C. Northcutt, Assistant United States Attorney for the District of Colorado.

N/h

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OVERRULING MOTION FOR NEW TRIAL—September 27, 1927

[fol. 11] At this day, it appearing to the court that the record of the court on to wit, the twenty-first day of September, A. D. 1927, is erroneous,

It is ordered by the court that the following stand and be taken to be of the same force and effect as though entered herein on to wit: the twenty-first day of September, A. D. 1927.

At this day comes the defendant by Roy H. Blackman, Esquire, assistant district attorney; and the motion for a new trial of the issues herein joined coming on now to be heard is submitted to the court. And the court having considered the same and being now fully advised in the premises:

It is ordered by the court for good and sufficient reasons to the court appearing that the said motion be, and the same is hereby denied.

IN UNITED STATES DISTRICT COURT

No. 8156

ROBERT G. MEADOWS

vs.

THE UNITED STATES OF AMERICA

Money Demand War Risk Insurance Act

JUDGMENT—Sept. 27, 1927

This cause came on regularly for trial on the 28 day of July, A. D. 1927, S. R. Owens, appearing as counsel for the Plaintiff, and the United States District Attorney by R. H. Blackman, Richard A. Toomey, L. A. Lawlor, and Forrest C. Northcutt, for the Defendant. A trial by jury having been expressly waived by the counsel for the respective

parties, the cause was tried before the court sitting without a jury; whereupon witnesses on the part of the Plaintiff were sworn and examined, the Defendant not presenting any evidence; and the evidence being closed, the cause was submitted to the court for consideration and decision, and, after due deliberation thereon, the court finds specifically that the Plaintiff was not permanently and totally disabled on February 21, A. D. 1923; that he is entitled to have the Seven Thousand Dollars ($7,000.00) remaining of his war risk insurance reinstated; that he was permanently and totally disabled on and after August 3, A. D. 1923; that the [fol. 12] court finds generally for the Plaintiff; that he is entitled to judgment and other and further relief as prayed in the amended complaint.

It is therefore ordered and adjudged that the Plaintiff's remaining Seven Thousand Dollars ($7,000.00) of war risk insurance be, and it is hereby reinstated as of February 21, A. D. 1923, upon his tendering the necessary premiums therefore.

That plaintiff, Robert G. Meadows have and recover of and from the defendant, the United States of America, judgment in the sum of One Thousand Nine Hundred Seventy-two and 25/100 Dollars ($1,972.25), being an amount equal to Forty and 25/100 Dollars ($40.25), for each and every month beginning the 3rd day of August A. D. 1923, and ending with the 3rd day of September, A. D. 1927.

That S. R. Owens, Attorney for the plaintiff in the above and foregoing action is hereby awarded the sum of One Hundred Ninety-seven and 22/100 Dollars ($197.22),as Attorney, for services rendered plaintiff in the above-entitled action, said amount being ten per cent of the judgment aforesaid, together with ten per cent on each and every monthly installment hereafter received by plaintiff from the defendant on account of payments to be made plaintiff by defendant under the policy aforesaid.

IN UNITED STATES DISTRICT COURT

PETITION FOR WRIT OF ERROR—Filed Dec. 21, 1927

Comes now the United States of America, defendant herein, by George Stephan, United States Attorney for the

District of Colorado, and R. H. Blackman, Assistant United States Attorney for the District of Colorado, and says that on the 27th day of September, A. D. 1927, the Court entered judgment herein in favor of the plaintiff and against the defendant, in which judgment and the rendition thereof and in the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the Assignment of Errors, which is filed with this petition.

Wherefore, this defendant prays for the allowance in this cause of a writ of error to the United States Circuit Court of Appeals for the Eighth Circuit, for the correction of the errors so complained of, and that a transcript of the record of proceedings and papers in this cause duly authenticated [fol. 13] may be sent to the said United States Circuit Court of Appeals for the Eighth Circuit.

Dated at Denver, Colorado, this 21st day of December, A. D. 1927.

George Stephan, United States Attorney for the District of Colorado. R. H. Blackman, Assistant United States Attorney for the District of Colorado.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Dec. 21, 1927

The defendant in the above-entitled action, in connection with its petition for a writ of error, makes the following assignment of errors which it avers occurred upon the trial of this cause, to wit:

I

The Court erred in finding that the plaintiff herein complied with the requirements for re-instatement of his War Risk Term Insurance Policy, as prescribed by the rules and regulations promulgated by the United States Veterans Bureau and prescribed by Section 408 of the War Risk Insurance Act, as amended (42 St. L. 1525).

II

The Court erred in finding that the plaintiff was not totally and permanently disabled at the time he applied for the re-instatement of his insurance.

III

The Court erred in finding that the plaintiff herein, during his lifetime, submitted proof satisfactory to the Director of the United States Veterans Bureau, showing the service origin of the disability or aggravation thereof, and that the applicant, the plaintiff herein, was not totally and permanently disabled.

IV

The Court erred in finding that the finding of the Director of the United States Veterans Bureau as to the plaintiff's condition of health at the time he made application for re- [fol. 14] instatement of his War Risk Term Insurance was not conclusive and was subject to revision.

V

That the finding of the Court that the plaintiff herein was not totally and permanently disabled at the time of his application for reinstatement of his insurance is contrary to law.

VI

That the finding of the Court that the plaintiff herein was not totally and permanently disabled at the time of his application for reinstatement of his insurance was contrary to the weight of the evidence.

VII

That this Court was without jurisdiction to determine the condition of health of the plaintiff at the time the application for reinstatement of his War Risk Term Insurance was made.

VIII

That this Court was without jurisdiction to enter any order herein requiring the Director of the United States Veterans Bureau or any other officer of the government to take affirmative action or pay any amount of money to plaintiff herein.

IX

That the judgment of the Court entered herein was contrary to the law.

X

That the judgment of the Court entered herein was contrary to the weight of the evidence.

XI

That the Court erred in entering judgment herein in favor of the plaintiff and against the defendant.

XII

That the Court erred in overruling defendant's motion to dismiss plaintiff's case at the conclusion of plaintiff's testimony.

XIII

That the Court erred in overruling defendant's Motion for New Trial.

[fol. 15] Wherefore, defendant prays that said judgment herein of the District Court of the United States for the District of Colorado be reversed and that this defendant may have such further relief as may be just and proper to the end that justice may be done in the premises.

Dated at Denver, Colorado, this 21st day of December, A. D. 1927.

George Stephan, United States Attorney for the District of Colorado. R. H. Blackman, Assistant United States Attorney for the District of Colorado.

B/b.

IN UNITED STATES DISTRICT COURT

Bill of Exceptions—Filed Dec. 21, 1927

CAPTION

Be It Remembered that on the 27th day of July, A. D. 1927, the same being one of the juridical days of the regular May, 1927, Term of the District Court of the United States within and for the District of Colorado, sitting at Denver, the above-entitled cause came on for hearing before the Honorable J. Foster Symes, Judge of said Court, the plain-

tiff appearing by Sam R. Owens, Esquire, and A. Sheridan Abel, Esquire, his attorneys, and the defendant appearing by Roy H. Blackman, Esquire, Assistant U. S. Attorney, Lawrence A. Lawler, Esquire, Trial attorney U. S. Veterans Bureau, and Richard A. Toomey, Esquire, Regional Attorney U. S. Veteran's Bureau, its attorneys.

Thereupon the following proceedings were had:

The Plaintiff, To Maintain the Issues herein in his behalf offered and Gave in Evidence as Follows:

ROBERT G. MEADOWS, plaintiff, being first duly sworn, testified in his own behalf as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.

A. Robert G. Meadows.

Q. You are the plaintiff in the case of Robert G. Meadows against the United States of America?

A. Yes.

[fol. 16] Q. Are you a citizen of the United States and resident of the State of Colorado?

A. Yes.

Q. Were you in the army from April 3, 1919, to April 2, 1922?

A. Yes.

Q. Did you reinlist after that?

A. Yes.

Q. State when you re-enlisted.

A. Reenlisted April 3, 1922, discharged disabled August 2, 1923.

Q. How long did you serve in the army in all?

A. From February 20, 1911, to August 2, 1923.

Q. Did you take out an insurance policy while in the army?

A. Yes.

Q. How much?

A. Ten Thousand Dollars.

Q. Did you permit any of that to lapse?

A. Permitted $7,000 to lapse.

Q. When did it lapse?

A. February, 1920.
Q. Did you ever apply to reinstate the remaining $7,000?
A. Yes.
Q. When?
A. About March 2, 1923.
Q. Did you submit yourself to examination at that time?
A. I was placed in the hospital at the time.
Q. And had the examination taken at the hospital?
A. Yes.
Q. Was that submitted to the Veterans Bureau along with your application for reinstatement?
A. Yes.
Q. Did you tender any premiums along with the application?
A. Back premiums of $199.13.
Q. Back premiums from the date of the lapse of the policy?
A. Yes.

The Court: That is all admitted in the pleadings, isn't it?
Mr. Owens: Yes, it is, Your Honor.

Q. In what organization did you re-enlist?
A. Company I, 12th Infantry.
Q. What became of this application for re-instatement?
A. I was informed by the Veterans Bureau that my application was rejected.
Q. When were you so informed?
A. July, 1923.
Q. State for what reason your application was rejected.
A. Totally and permanently disabled.
Q. From what date?
A. From February 21, 1923.

(Thereupon a paper was marked for identification plaintiff's Exhibit A.)

[fol. 17] Q. I hand you plaintiff's Exhibit A, and ask you to state what that is.
A. Letter received by me from the Veterans Bureau on July 6, 1925.
Q. Concerning what?
A. Concerning my request for reinstatement of insurance.

Mr. Owens: We offer plaintiff's Exhibit A in evidence.

Mr. Lawler: We object; not the best evidence of rejection. The rejection of his application is already admitted in the pleadings.

Mr. Owens: That goes to the date as to when he was permanently and totally disabled.

The Court: That is not the best evidence.

Mr. Owens: It is a letter from the Government in the due course of business concerning the matter at issue.

The Court: How do we know it is from the Government? No one says it is.

Mr. Owens: Plaintiff testified he got it.

The Court: You got that letter, but that doesn't prove it.

Mr. Owens: We withdraw the offer at this time.

(Thereupon papers were marked for identification plaintiff's Exhibits B, C, D, E, F, G, H, I and J, respectively.)

Mr. Abel: I would like to ask the court to carefully consider its ruling on whether these letters are admissible.

The Court: As I understand it, the letter has been withdrawn.

Mr. Abel: We would like to offer them again. These were written by the defendant.

The Court: The question is, whether it is admissible or not. On the evidence now before the court it is not admissible, not properly proven.

Mr. Abel: The plaintiff testified they were received by him.

The Court: I understand that.

[fol. 18] Mr. Abel: If the Government disputes the fact of the matter, that these letters were written by the Veterans Bureau, they ought to prove that.

The Court: We are not concerned with that. The question is, whether, it has been proven properly.

Mr. Owens: We withdraw it for the present, Your Honor. I think that is all at this time.

Mr. Lawler: Do you want to offer his application for reinstatement?

(Thereupon a paper was marked for identification plaintiff's Exhibit K.)

Q. I hand you plaintiff's Exhibit K and ask you to state what that is?

A. Application for reinstatement.

Mr. Owens: We offer this in evidence. Counsel has agreed to the offer of this.

The Court: Very well.

Mr. Owens: That is all.

Mr. Lawler: No cross-examination.

Richard A. Toomey, called and sworn as a witness on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.

A. Richard A. Toomey.

Q. Where are you employed?

A. United States Veterans Bureau, Denver, Colorado.

Q. How long have you been so employed?

A. Approximately four years.

Q. You are familiar with Government records, that is, of the Veterans Bureau?

A. Some of the records pertaining to the United States Veterans Bureau.

Q. Can you identify the Assistant Director's signature, Charles E. Mulhearn?

A. I cannot.

Q. Have you ever seen it?

A. I have seen the signature many times, but I cannot say if it is the original.

Q. I hand you plaintiff's Exhibit A and ask you to state whether or not you know what that is.

A. This pretends to be——

[fol. 19] Q. State what it is, if you know. Is that a letter from the United States Veterans Bureau at Washington?

A. That is what it pretends to be.

Q. Who is it signed by?

A. It purports to be the signature of Charles E. Mulhearn, Assistant Director.

Q. Have you ever seen that signature before in Government business?

A. I have seen the name of Charles E. Mulhearn written.

Q. Have you ever seen a signature like that on any letters?

A. I don't believe I am competent to testify to that.

Q. You receive letters from the central office, signed by Mulhearn quite often, don't you, in the course of business in the Veterans Bureau?

A. I did before his death.

Mr. Owens: We offer plaintiff's Exhibit A in evidence.

Mr. Lawler: We object; not properly identified. It is incompetent, irrelevant and immaterial; not the best evidence.

The Court: Why don't you admit this?

Mr. Lawler; I don't know for what purpose he wants it admitted.

The Court: Why don't you admit it to save time. I don't know if it has any probative value.

Mr. Owens: The central office states that the man was not permanently and totally disabled on February 5, 1923.

Mr. Lawler: Then I object because it is not competent evidence, nor relevant to any of the issues in this case. We have admitted that the Bureau denied reinstatement, and allege that he was permanently and totally disabled at that time, and that was the reason for the rejectment of his application.

Mr. Owens: This letter goes to show he was not permanently totally disabled on that day. The Board of Appeals so states in this letter. The Government is bound by all the rules of evidence of a private insurance company. It does not prove it, but it has some bearing.

Mr. Lawler: This does not make any statement with reference to any date of permanent total disability, in any event. It merely states that "the evidence in file is insufficient to show that your disability is ratable as permanent and total prior to August 2, 1923."

[fol. 20] The Court: Objection sustained. That is not proof of any action by the board.

Mr. Owens: Exception.

Q. I hand you plaintiff's Exhibit B and ask you to state what that is, if you know.

A. This purports to be a letter addressed to Robert G. Meadows, Fitzsimons General Hospital, Fitzsimons, Colorado, dated August 6, 1925, over the signature of, or over what purports to be the signature of Charles E. Mulhearn, Assistant Director.

Q. Do you know whether that is Mulhearn's signature or not?

A. I do not.

Mr. Owens: If the court please, we would like to call another witness and excuse Mr. Toomey.

The Court: Very well.

Mr. Lawler: We will admit that these came from the central office, signed by Charles E. Mulhearn or some one authorized to sign his name, to save time.

Mr. Owens: Very well, then. We offer plaintiff's Exhibits A to K, inclusive, which came from the central office, concerning plaintiff's disability.

Mr. Lawler: We object on the ground that they are incompetent, irrelevant and immaterial; not the best evidence; have no bearing on the issues of the case, except for the purpose of showing, possibly, rejection of his application for reinstatement and that is admitted.

Mr. Owens: They all go to show the Veterans Bureau decision as to disability, Your Honor; what they found.

The Court: Suppose they do? It isn't evidence of that.

Mr. Owens: It is an admission on the part of the defendant.

The Court: Do you think that is competent evidence to prove his disability, having someone come in here to testify to what somebody else said? I think that is hearsay evidence.

Mr. Owens: These letters were written in due course of business by the Government.

The Court: Here is one that says he was permanently and totally disabled. You don't want that in, do you?

[fol. 21] Mr. Owens: That is a mistake. Permanent total up to a certain date.

The Court: As I understand, you want to prove he was permanently and totally disabled in April, 1923?

Mr. Owens: We say he was not permanently and totally disabled on March 5, 1923, when he applied to reinstate his

insurance, but that he was permanently and totally disabled on August 3, 1923.

The Court: The objection is sustained as not the best evidence. It is hearsay, what someone's opinion is.

Mr. Owens: We save an exception as to each exhibit.

E. B. MAYNARD, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.
A. Edwin Brooks Maynard.
Q. What is your official capacity in the army?
A. Major Medical Corps.
Q. Where are you stationed?
A. Fitzsimons General Hospital.
Q. Do you have charge of the records at Fitzsimons, the medical records, clinical records of the patients, and so forth?
A. I do.
Q. How long have you so had charge of those records?
A. Since December 6, 1924.
Q. Do you know the plaintiff in this case, Robert G. Meadows?
A. I do.
Q. Does he have any clinical records at Fitzsimons Hospital, reports of physical examinations, and so forth?
A. Not now. That is, they are not at Fitzsimons at this time.
Q. He had some records there?
A. Yes, he had some records there.
Q. Where are those records now?
A. They were turned over by me to Mr. Lawler.

(Thereupon a paper was marked for identification plaintiff's Exhibit L.)

Q. I hand you plaintiff's Exhibit L and ask you to state what it is.

[fol. 22] A. This is 55-A admission slip and clinical record of Robert G. Meadows, First Sergeant Company I, 12th Infantry.

Q. The plaintiff, sitting over here (indicating)?

A. Yes.

Q. They are permanent records of Fitzsimons, are they Major?

A. They are.

Q. Of this plaintiff?

A. Yes.

Q. What does that exhibit purport to show?

Mr. Lawler: We object, it is hearsay, incompetent, irrelevant and immaterial. They are not facts within the witness' knowledge.

The Court: He is not qualified yet. You are calling for conclusion of law, and not bringing out facts so the court can determine.

Q. What is that exhibit, Major, if you know?

A. I stated it was 55-A, admission slip and clinical record of Robert G. Meadows, First Sergeant Company I, 12th Infantry.

Q. Show anything else?

A. Shows he was admitted to the hospital November 28, 1922.

Mr. Lawler: We object to reading the records.

The Court: Can't read the record until it is in evidence.

Mr. Owens: He has identified the record.

The Court: You have not qualified him yet.

Q. You had charge of these records, did you, Major?

A. I did.

Q. Do you personally see that these records are made?

A. I did not personally see this, because it was before my time of arrival at the hospital. This record was concluded in 1923 and I arrived in 1924.

Q. Do you know of your own knowledge whether or not this exhibit is a correct record of the physical examination of Meadows on the dates that are on there?

A. I know it purports to be. I did not personally examine Meadows and check the records with the examination.

Q. It is an army record, isn't it?
A. It is an army record.
Q. Permanent army record?
A. Permanent army record.

Mr. Owens: We offer plaintiff's Exhibit L, in evidence.
[fol. 23] Mr. Lawler: We object; incompetent, irrelevant and immaterial; hearsay; not the best evidence.
The Court: I think the record would be admissible if he proved it as such, but it has not been proven as such yet.
Mr. Owens: He has testified to these records.
The Court: You are just asking him for a lot of conclusions, and what he thinks about those records. Unless it is properly established we cannot admit it.
Mr. Owens: He has testified he had charge of these records.
The Court: I heard all of his testimony.
Mr. Owens: We withdraw the offer at this time.

(Thereupon a paper was marked for identification plaintiff's Exhibit M.)

Q. I show you plaintiff's Exhibit M and ask you to state, if you know, what that is.
A. Yes. Current clinical records of Robert G. Meadows.
Q. Do you know of your own knowledge that that is the clinical record of the plaintiff?
A. I do.
Q. How do you happen to know that?
A. Well, I know it because it bears my signature in two places that the record has been turned in and diagnosis checked by myself. Turned in as his record.
Q. Was it turned in in due course of business of the Government?
A. On the occasion when that was signed it was.
Q. Anything else in that exhibit?
A. Series of sick and wounded cards, report made to the Surgeon General relative to diagnosis and change of diagnosis of the patient.
Q. Do you know of your personal knowledge that is the report made to the Surgeon General concerning his disability?
A. I know they were taken from the files in my office.
Q. What date was that made?

Mr. Lawler: We object, Your Honor. These records are not in evidence.

The Court: Sustained.

Mr. Owens: Exceptions.

Q. They are part of the clinical records in Fitzsimons General Hospital which are in your custody, are they?

[fol. 24] A. They are.

Q. And of this plaintiff, Robert G. Meadows?

A. They are.

Mr. Owens: We offer in evidence plaintiff's Exhibit M.

Mr. Lawler: We object, on the ground not properly identified or authenticated; on the further ground that they are incompetent, irrelevant and immaterial, mere hearsay and not the best evidence.

Mr. Owens: They are part of the permanent records, and he has testified that they are such of his own personal knowledge.

The Court: With due respect to the witness, we cannot say. We have got rules of evidence. Can't admit it on the present status of the case.

Mr. Owens: We had an understanding with the district attorney's office that they might be admitted.

The Court: Can't help that. I am not bound by your understanding with the district attorney's office.

Mr. Owens: We withdraw the offer. That is all.

Mr. Lawler: No cross-examination.

William F. Rice, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.

A. William Frederick Rice.

Q. You are in the army?

A. Yes.

Q. What capacity?

A. Major Medical Corps.

The Court: What army, French Army, or English Army? Can't expect the court to guess at it.

Q. Are you in the United States Army?
A. Yes.
Q. In what capacity?
A. Major Medical Corps.
Q. Where are you stationed?
A. Fitzsimons General Hospital, Denver, Colorado.
Q. Are you acquainted with the plaintiff in this case, Mr. Robert G. Meadows?
A. Not personally acquainted, no.
Q. Can you identify him? Is he sitting in the court room?
A. I can, yes.
[fol. 25] Q. Have you ever made an examination of him, a physical examination?
A. I have.
Q. Will you kindly state on what date?
A. It will be necessary for me to have the clinical records before I can determine absolutely. (Records handed to witness). These records show I examined Robert G. Meadows on December 3, 1922.
Q. What was the result of that examination, or, in other words, what did you find concerning his physical condition at that time?

The Court: Tell us, doctor, the extent of your examination, so we can tell whether it was a full, complete, detailed one, and then tell us after that what you found.

A. At that time I wrote a somewhat detailed history of the patient's statement concerning his [symptoms]. I examined his X-ray plates, observed his temperature charts, and his other clinical findings, and made a diagnosis of tuberculosis of both lobes of the left lung, active.

The Court: Made a pretty thorough examination?
The Witness: Yes.
The Court: You found what?
The Witness: Active tuberculosis both lobes left lung, with cavitation left upper lobe.
The Court: This condition was all confined to the left lung?
The Witness: Yes.

Q. What was your diagnosis? Was he or was he not permanently disabled on that date?

A. I don't believe I am capable of testifying to that.

Q. In your capacity in the army are you not called upon to determine whether a man is permanently disabled, from time to time?

A. We are not required to so state, from the standpoint of the Veterans Bureau.

Q. What was your diagnosis?

A. Tuberculosis, pulmonary, chronic, active upper left lobe and upper part of left lower lobe, with cavitation of the left upper lobe.

Q. Did you examine him subsequent to that date?

The Court: That was December 3, 1922?

The Witness: Yes.

[fol. 26] A. So far as this record shows, I did not.

Q. Do you know whether or not you examined him after that?

A. I do not.

Q. I hand you plaintiff's Exhibit M; see if that refreshes your recollection.

A. These records do not show that I examined him subsequently.

Mr. Owens: That is all.

Cross-examination.

By Mr. Lawler:

Q. Major, at the time of this examination which you made in December, 1922, was Mr. Meadows in Fitzsimons Hospital as a patient?

A. He was.

Q. Do you remember whether or not he was in bed at the time you examined him?

A. At the time of the actual examination?

Q. Yes?

A. He was not.

Q. Was he just prior to the examination?

A. I couldn't say.

Q. Do you know whether he was kept as a bed patient at that time?

A. I can say that all patients are kept for certain hours of the day as bed patients, and he was at that time for those hours.

Q. In your opinion, should a man in the condition of this plaintiff be in bed?

Mr. Owens: We object as immaterial.

Q. I mean the condition at the time of this examination?

The Court: There is an objection here.

Mr. Lawler: It is a proper question. This is the physician who examined him. He said it was active tuberculosis.

(Question read as follows: In your opinion, should a man in the condition of this plaintiff be in bed?)

The Court: What is the object of that?

Mr. Lawler: To show his general condition of health, I mean, should a person who has the physical symptoms which he found in the plaintiff be in bed?

The Court: It is immaterial. It is a question of what this man actually did. Objection sustained.

Q. What was the general condition of the plaintiff at the time of your examination?

[fol. 27] A. He appeared to have lost some weight, and his temperature chart showed a moderate degree of afternoon fever. May I ask if I shall give the physical findings?

Q. No; just the general physical findings.

A. He appeared to be under weight, and his temperature chart showed a slight afternoon fever.

Q. Do you remember what treatment you prescribed for him at that time?

A. I can't remember the treatment prescribed in this individual case, no.

Q. Do you have any set regular treatment to give to tubercular patients, who have active tuberculosis in both lobes of the left lung, with cavitation in the upper?

Mr. Owens: We object as immaterial; no bearing on the issues of the case; does not tend to prove or disprove the issues as to what treatment he gave him.

Mr. Lawler: The issue in this case is, whether or not this plaintiff was permanently and totally disabled at the time he made application for reinstatement of insurance on

February 21, 1923, and any evidence which tends to show whether he had the ability and capacity to follow a gainful occupation has direct bearing upon the issues of the case.

The Court: I think that is true; but you are asking what he prescribed.

Mr. Lawler: I asked him, first, if he remembered what treatment was prescribed in this particular case, and he said no. Now I want to show what his treatment was by the general course of treatment he would [—] prescribed in ordinary circumstances.

The Court: I think the objection is good. Anything this gentleman knows about his condition is all right, but what was prescribed does not throw any light upon it, unless he prescribed for this specific man.

Mr. Lawler: He says he has no personal knowledge.

The Court: Then the objection is sustained, if he has no personal knowledge.

Q. In your opinion, was Mr. Meadows, at the time of your examination, able to follow continuously a gainful occupation?

A. He was not.

Mr. Lawler: That is all.

[fol. 28] Redirect examination.

By Mr. Owens:

Q. On what do you base that statement, that he was not capable of following a gainful occupation?

A. I consider that any man with active tuberculosis of one entire lung is not capable of working.

Q. In fact, he was carrying on, was he not?

A. At the time I examined him he was not.

Q. Wasn't he in the army then?

A. He probably was, but wasn't working.

Q. He was receiving pay, was he not?

A. So far as I know he was.

The Court: Was he on active duty?

The Witness: He was admitted as a patient from active duty.

The Court: In other words, he was at the hospital all the time? He wasn't on duty and just coming over for treatment?

The Witness: No, sir.
The Court: He was doing no active duty in the army?
The Witness: No.
Mr. Owens: That is all.
Mr. Lawler: That is all.

LLOYD E. TEFFT, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.
A. Lloyd E. Tefft.
Q. Are you now in the United States Army?
A. I am.
Q. How long have you been in the United States Army?
A. Nearly thirteen years.
Q. What is your rank?
A. Major.
Q. In what corps?
A. Medical corps.
Q. Are you now stationed at Fitzsimons General Hospital, Colorado?
A. I am.
Q. Were you stationed at Fitzsimons General Hospital in 1923?
A. I was.
Q. All of the year 1923?
A. Yes sir.
[fol. 29] Q. Did you ever have occasion to give a physical examination to Robert G. Meadows?
A. I did.
Q. On what date? Would you like to refresh your memory from records?
A. Yes. (record handed to witness) The records show three examinations by me.

The Court: We are not concerned with what the records show; we want to know what you know.

A. I examined Sergeant Meadows some time during December, 1922.

Q. What kind of examination did you give him, Major, a physical examination?

A. Physical examination.

Q. Any particular kind of physical examination? Was it the lungs?

A. Complete physical examination, especially of his chest.

Q. State to the court just what you found and what your findings were?

A. Found activity in both lobes of the left lung with cavitation of left upper lobe.

Q. This cavitation of the left upper lobe, was it large or small?

A. As I remember it, it was rather small.

Q. Rather small?

A. Yes.

Q. Was that the extent of the involvement in the left lung, that small cavitation?

A. With probable activity in the upper part of the left lower lobe.

Q. Did you find any tuberculous complications, such as ulcerative laryngitis, or anything of that kind?

A. I did.

Q. When did you next examine him?

A. I can't say definitely.

Q. Refresh your memory from the records.

A. I examined him in March, 1923, and May.

Q. State your findings in March, 1923?

A. March, 1923, the patient had artificial pneumothorax and the left lung was collapsed.

The Court: Was that collapsed by you?

The Witness: Either myself or assistant.

The Court: It was a medical examination?

The Witness: Yes.

[fol. 30] Q. You found that on this examination?

A. Yes.

Q. Was the right lung collapsed?

A. Left lung.

Q. What was the condition of the right lung?

A. The right lung showed no signs of tuberculosis.

Q. The right lung was clear, was it?

A. Clear, yes.

Q. The cavitation, what had become of that, that you found in December?

A. That was collapsed along with the rest of the lung.

Q. What was his general physical condition at that time?

A. Good.

Q. That was March 5th?

A. March 3rd.

Q. Do you know what his weight was at that time?

A. I do not. The record, either prepared by myself or my assistant, would show it.

Q. Did he, at that time, show any indications of recovery? I don't mean complete, but sufficient to carry on some occupation?

A. Except the lung was collapsed he was in good condition.

Q. Could a man with one lung collapsed and the other in good condition, as you say this man was, carry on at any kind of light work?

A. Light work, yes.

Q. Can you state any particular work that he might be able to carry on under the physical conditions as you found them at that time?

A. As long as a lung is kept collapsed by repeated injection of air, with as favorable results as were in this case from the collapse, he could do such light work as clerical work.

Q. When did you next examine him?

A. In April, 1923.

Q. At Fitzsimons General Hospital?

A. At Fitzsimons General Hospital.

Q. What was his condition at that time?

A. Practically the same as the preceding month.

Q. Was he any worse?

A. Not worse; probably somewhat better.

Q. Probably somewhat better in April?

A. Yes.

Q. Are you a tuberculous specialist, Major; that is, have you specialized in that?

A. Only in the course of routine work for a year and a half in Fitzsimons.

[fol. 31] Q. In your opinion, going back to April, 1923, was Mr. Meadows permanently totally disabled from carrying on any gainful occupation?

Mr. Lawler: We object. Calls for the conclusion of the witness.

Mr. Owens: He is an expert witness. He has examined him three times and had the history of the case at Fitzsimons.

The Court: What do you mean by totally and permanently? We haven't had a definition yet.

Mr. Owens: He ought to be able to tell from a medical standpoint if he was able to carry on.

The Court: He said he was capable of carrying on light work.

Mr. Owens: Very well. I'll withdraw the question. That is all.

Cross-examination.

By Mr. Lawler:

Q. At the time of your first examination of Mr. Meadows in December, 1922, was he a patient at Fitzsimons Hospital?

A. He was.

Q. Was he on active service there, or *in* just a patient for treatment?

A. As a patient.

Q. For treatment?

A. Yes, for treatment.

Q. Do you know whether he was working at that time or not?

A. I do not.

Q. Was he working about that time, in December?

A. No; patient.

Q. Did you recommend that he work at that time?

A. I did not.

Q. Do you remember what treatment you prescribed at that time for him?

A. Collapse of the lung.

Q. That was the time of your first examination?

A. I believe so.

Q. What is a collapsed lung?

A. That is an expedient to clear up activity of one lung.

Q. First, my question was, what is it?

A. It is allowing air into the chest wall, between the lung and chest wall, allowing the lung to collapse.

Q. What is the effect of air going in, with reference to the lung?

A. It collapses the lung.

[fol. 32] Q. When the lung collapses, what happens to it? I mean, with reference to its use.

A. It is thrown out of use.

Q. Is there a complete loss of use of the lung that is collapsed?

A. Depending on the amount of collapse.

Q. By the way, were you stationed at Fitzsimons from December to March?

A. I was.

Q. Do you know whether Mr. Meadows continued to be a patient in the hospital during that period?

A. He did.

Q. He was still a patient in the hospital in March, 1923, at the time of your examination?

A. Yes.

Q. Was he working during that period or not, if you know?

A. No outside work. I don't recollect whether he was permitted graduated exercise at that time or not.

Q. At the time of your examination in March, 1923, did you recommend that the plaintiff work?

A. I did not.

Q. Did you recommend that he continue in the hospital for further treatment?

A. I don't think I made any recommendation one way or the other.

Q. Do you know whether he did remain in the hospital?

A. He remained through March.

Q. You testified at the time of your examination in March, 1923, his physical condition was good, his general physical condition?

A. Yes.

Q. What do you mean by that statement, as to his condition being good?

A. I don't recall, except probably based upon the fact of some gain in weight.

Q. Did he have active tuberculosis at that time?

A. Yes.

Q. He had collapse of the entire left lung?

A. Yes.

Q. And when you stated his condition was good, you meant his condition was good as an average individual, or for a patient who has active tuberculosis with a collapsed lung?

A. For a patient with tuberculosis.

Q. You testified that he could do light clerical work at that time. Did you recommend that he do light work at that time?

Mr. Owens: We object. He made no recommendation at all.

Mr. Lawler: He has not made any statement of this.

[fol. 33] The Court: Overruled.

A. I didn't make recommendation one way or the other, as I recall.

Q. He remained in the hospital after that examination for further treatment?

A. He did.

Q. Do you know how long he remained in the hospital after that?

A. I do not.

Q. Your next examination was in April?

A. April.

Q. You found him still suffering with active tuberculosis at that time?

A. I did.

Q. And his lung was still collapsed?

A. Still collapsed.

Q. And he was still in the hospital as a patient?

A. He was.

Q. Do you know whether you examined him after that time or not?

A. Examined him in May, 1923.

Q. What condition did you find then?

A. Practically the same condition as the preceding month, with the possibility of a small amount of fluid present in the lower part of the left chest.

Q. Of what significance is that?

A. Fluid usually occurs sooner or later in most all collapse cases.

Q. Is that of any particular significance with reference to the health of the patient, or probability of recovery?

A. None.

Q. You testified that you found a cavitation when you next examined him. Where was that cavity located?

A. Left upper lobe.

Q. You said it was a small one. Can you give us an idea of about how large it was?

A. I cannot, because there is no record of the examination made at that time.

Q. Can you recall whether that cavity increased?

A. I cannot.

Q. What is the significance of a cavity in the lungs?

A. It is a breaking down of the tissue in that particular area.

Q. Is that the result of tuberculosis disease?

A. It is.

Q. Is that a permanent injury to the lung?

A. Not necessarily. The cavity sometimes clears and heals up.

[fol. 34] Q. Is that the general rule, that they do as a rule clear up and heal?

A. I don't know.

Mr. Lawler: That is all.

Redirect examination.

By Mr. Owens:

Q. Did you find that cavity in the subsequent examinations? You stated you found it in the first examination.

A. It is impossible to find it in a collapsed lung.

By The Court:

Q. How long have you been in the army?

A. Nearly thirteen years.

Q. In the Medical Corps all that time?
A. Yes sir.
Q. How long have you handled these tubercular cases?
A. A year and a half at Fitzsimons.
Q. Any experience before that?
A. No sir.
Q. What is your medical education?
A. Graduate of the University of Michigan.
Q. When did you graduate?
A. 1911.
Q. And been active in the practice of your profession since?
A. Yes.
Q. When you first examined this young man, you found both lobes of the left lung involved?
A. As I recall it, on my first examination in December I found activity in the left upper lobe, and probably activity in the upper part of the left lower lobe.
Q. At that time the whole lung was not involved?
A. No sir.
Q. On the next examination you collapsed it, or had it collapsed, was the whole lung involved at that time?
A. I couldn't tell, sir.
Q. You can't tell the condition of the lung after you collapse it?
A. No sir.
Q. At the time of the collapse, or just previous thereto, was the whole lung involved?
A. No sir.
Q. In other words, he had no use of that left lung?
A. Yes.
Q. At no time was his right lung involved?
A. No sir.
Q. You examined him first in December, 1922, and last in May, and two examinations in between that time; can you give us a comparison of his condition between the first and second examinations? That is to say, whether there was improvement, or whether he was getting worse.
[fol. 35] A. He improved very much after he had his lung collapsed, and showed continual improvement.
Q. In other words, his disability was less in May, 1923, than it was in the previous December? A. Yes sir.

Q. You have not seen him since then?

A. Not to examine him, no sir.

Q. In what respect was he better?

A. He followed the usual rule in cases of collapse of the lung. When there is activity in one lung and it is collapsed, that activity, or the signs and symptoms of that activity disappear. As to the condition of the lung which is collapsed, no one can say until the lung is expanded again.

Q. What do you say with regard to other symptoms? Did his weight increase?

A. As I remember, yes.

Q. That is an important indication in tuberculosis, is it not?

A. It is a good sign, yes.

Q. What can you say as to his ability to do any work, or earn his living in any respect during that time? Did the injury to his health prevent him from doing some work of some kind?

A. That is rather hard to say. As long as the lung is kept collapsed and there is no sign of activity in the other lung, they can do light work, under observation.

Q. In other words, he could have gone out and earned a little money provided he took care of himself and was given medical advice from time to time?

A. Yes, with the collapse continuous.

Q. And the light work would not have interfered with the condition of collapse?

A. No sir.

Q. At no time was his right lung involved in any way?

A. Not during my observation.

Q. He had complete and full use of that?

A. Yes sir.

Recross-examination.

By Mr. Lawler:

Q. You stated the symptoms of improvement after the collapse of his lung. What were the symptoms to which you referred?

A. Probably a little gain in weight, disappearance or diminution of temperature, general picking up in general health, his appetite better.

Q. What causes rise of temperature in tubercular cases?

A. Usually continuous activity.

Q. Does tubercular disease produce toxemia in the system?

A. Usually yes.

[fol. 36] Q. Is the increase in pulse due to toxemia? I mean increase in temperature?

A. Probably.

Q. By collapse you temporarily withdraw the lung from use?

A. Yes.

Q. That prevents toxemia from getting into the system to the same extent that it got in before collapse; is that a fact?

A. Yes.

Q. The increase in weight and the improvement in pulse and temperature are the result of that fact?

A. Yes.

Q. That is, the decrease of toxemia in the system?

A. Yes.

Q. Is there any way of telling whether a man's health, that is, whether he would still be affected by toxemia if his lungs were not collapsed?

A. Not until you allow the lung to expand again.

Q. You never examined this man to find out whether his pulse and temperature were up after his collapse was terminated?

A. No.

Q. Do you know whether his lung has expanded since?

A. I do not.

Q. With reference to work which a person with activity and collapsed lung can do, would you recommend, for any patient, that he go out and secure a job for wages?

A. Not unless he had to.

Q. Would that, in all probability, injure his health?

A. There is a chance he might.

Q. Is there a probability that it would?

A. That would depend largely on the class of work and the amount of work. There are times when he could probably work, and times when he possibly could not work. He would have to be under observation.

Q. Is strain, and exercise generally, bad for persons who have active tuberculosis?

A. At most stages.

Q. What is your idea of treatment for tuberculosis? What is the best treatment?

A. Rest during the active stage and graduated exercise.

Q. Is that the treatment which you recommend for the plaintiff in this case?

A. It was.

Q. Could you, in sound medical judgment, recommend to this plaintiff that he go out and secure light work for wages, which would require him to put in certain number of hours every day?

A. I would not.

Q. And you did not do it, as a fact?

A. No.

Mr. Lawler: That is all.

Mr. Owens: That is all.

[fol. 37] C. L. Beaven, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.

A. C. L. Beaven.

Q. Your occupation, or business or profession.

A. Major Medical Corps, United States Army.

Q. Where are you stationed, Fitzsimons General Hospital?

A. Yes.

Q. Were you there in the year 1923?

A. Yes.

Q. Did you have occasion to render a physical examination upon one Robert G. Meadows?

A. I did.

Q. Can you identify Mr. Meadows?

A. I can.

Q. Is he (pointing) the gentleman you examined in 1923?

A. Yes.

Q. What kind of examination did you render?

The Court: What date in 1923?

Q. What date in 1923 did you examine him?

A. I will have to refresh my memory from the clinical record. (Clinical record handed to witness) I examined Mr. Meadows on July 12, 1923.

Q. General physical examination, was it?

A. Complete physical examination.

Q. What did you find?

A. I found him suffering from tuberculosis, pulmonary, chronic, active, both lobes left, inactive right upper, cavity left upper. That is the first, or No. 1. This is No. 2; Pneumothorax, complete, artificial, left.

Q. What would you say you found, if anything, in the right lung?

A. Nothing in the right lung. I beg your pardon. I take that back. Inactive right upper.

Q. Any cavitation?

A. No, no mention of cavity on that side; cavity on the left side.

Q. Did you make any recommendations at that time to the Surgeon General concerning discharge of this man?

Mr. Lawler: We object.

The Court: Sustained.

Q. Was Mr. Meadows at that time able to carry on any light work, in your opinion?

A. Not over any long period.

Q. Could he do light clerical work, in your opinion under observation?

[fol. 38] Mr. Lawler: We object, incompetent and irrelevant.

The Court: Overruled.

Mr. Lawler: Exception.

A. I would like to qualify my answer by stating that an examination of this kind, that I made of Mr. Meadows, was a part of my duty as member of the Disability Board, and that examination consists in reviewing all the previous clinical records, such as X-rays, and making a physical examination; but for me to answer this question satisfactorily, I would have to have known Mr. Meadows as a patient over a long period of time, and I would rather not express an opinion.

Q. How long have you been in the army?

A. I am on my fifteenth year.

Q. What school did you graduate from?

A. Baltimore Medical College.

Q. Have you specialized in tuberculous disease to any extent?

A. I was on duty at tuberculous hospitals from November, 1920, until June, 1926.

Q. Is there a medical definition known to the medical profession concerning permanent total disability for a man?

A. I believe the Veterans Bureau have some regulations that govern that. Just what it is I do not know.

Q. How long did you say you specialized in tuberculous work?

A. About seven years.

Q. Have you had occasion to observe a considerable number of tubercular patients during that period?

A. Quite a number; quite a large number, yes.

Mr. Lawler: We will admit his qualifications as an expert.

Q. Assuming that a patient's left lung is collapsed, with slight activity in the right upper, would you say that that patient would never be able to carry on at any gainful occupation again?

Mr. Lawler: We object. No foundation laid; not pertaining to the issues of the case.

The Court: He said he had an inactive right. You said active right.

Q. Assuming he has an inactive right. Assuming, further, that his condition had slightly improved in December, up to the time you examined him; assuming, further, that he had increased in weight slightly;—would you say, then, [fol. 39] that that patient would never be able to again carry on at any substantially gainful occupation?

Mr. Lawler: We object as irrelevant, no bearing on the issues of this case.

The Court: Overruled.

Mr. Lawler: Exception.

A. No, I would not.

Q. You would not say that, under those circumstances, that this patient would never carry on any substantially gainful occupation?

A. No, I would not say that he could not.

Q. On your examination of Mr. Meadows at that time did you find tubercular complications, other than those you have mentioned?

A. No. If there had been any I would have it here over my signature.

Q. If there had been, you would have found it and made record of it?

A. Yes.

Mr. Owens: That is all.

Cross-examination.

By Mr. Lawler:

Q. In answer to the last hypothetical question you stated that you could not say that this man would never again be able to carry on continuously a substantially gainful occupation.

A. Yes.

Q. Could you tell at that time that he would be able to?

A. At the time I examined him?

Q. Yes.

A. I could not.

Q. Assuming that a man has active tuberculosis in December, 1922, that some time prior to March, 1923, his lung is collapsed, and assuming that he has been in the hospital continuously from that time until July 12, 1923, at the time of your examination, could you tell whether, from that evidence, a man will be able to work in the future?

Mr. Abel: We object. It does not conform to the facts in this case. Immaterial.

The Court: Overruled. A man can frame his own hypothetical question and you can frame yours.

Mr. Abel: Exception.

A. No, I could not.

Q. You found active tuberculosis at the time of your examination in July, 1923?

A. Yes.

Q. Did you recommend that the plaintiff work, at the time of your examination?

[fol. 40] A. I would strongly urge against it.

Q. If the plaintiff had worked at that time, would it probably have injured his health?

A. I would say it would be most likely to.

Q. What treatment did you prescribe for him?

A. He did not come to me for me to prescribe for him. I was not his attending surgeon; he merely came for examination when I was a member of the Disability Board.

Q. This examination was made at Fitzsimons General Hospital?

A. Yes.

Q. And the plaintiff at that time was a patient?

A. Yes.

Q. Do you know whether he was working or not at that time?

A. I don't think he was. No, I couldn't say. Not likely that he was.

Q. Was he provided in the hospital with a bed and room?

A. He was.

Q. And did he not leave to go down town, or anywhere else, to work?

A. I am quite sure that he did not.

Mr. Lawler: That is all.

Redirect examination.

By Mr. Owens:

Q. The simple fact that you would not recommend that he work in July does not mean that you found from his physical condition that he would never be able to work?

A. No, I would not say that he would never be able to work, but he might be.

Mr. Owens: That is all.

Recross-examination.

By Mr. Lawler:

Q. Did you ever examine the plaintiff after July, 1923?

A. I see no mention of it here in the record, and it is not likely that I did.

Mr. Lawler: That is all.
Mr. Owens: That is all.

J. D. Barnwell, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.
A. John D. Barnwell.
Q. Your profession?
[fol. 41] A. Captain Medical Corps, United States Army.
Q. Where are you stationed?
A. Fitzsimons General Hospital.
Q. Are you acquainted with the plaintiff in this case, Robert G. Meadows?
A. I am.
Q. Can you identify him in the court room?
A. I can.

(Thereupon papers were marked for identification plaintiff's Exhibits N, O, P, Q and R, respectively.)

Q. You are in the Medical Corps?
A. Yes.
Q. How long have you been in the Medical Corps?
A. About ten years.
Q. Do you specialize in any particular branch?
A. X-ray.
Q. I hand you plaintiff's Exhibit N and ask you to state, if you know, what that is.
A. X-ray plate of Robert Meadows.
Q. Plaintiff in this case?
A. Yes.

Mr. Lawler: We will agree that those are the X-ray plates of Robert G. Meadows.
Mr. Owens: We offer Exhibits N to R in evidence.
The Court: They will be admitted.

Q. Will you read the findings of the X-ray to the court? Explain the pictures.

A. Exhibit N, this film shows collapse of the left lung for pneumothorax; shows what appears to be a small cavity in the upper part of the lung; shows no fluid present in the left side of chest. The detail in the lung on this examination is too much blurred by breathing to show clearly. No involvement of the right side.

Q. When was that picture taken?

A. This was made March 2, 1923.

Q. Did you take another X-ray picture of him subsequent to that?

A. I did not, myself.

Q. Did you take one previously, I mean?

A. Yes, one was made previously but could not be located.

Q. I hand you Exhibit O and ask you to explain that.

A. This is an X-ray film of Robert G. Meadows, made February 20, 1924.

Mr. Owens: We withdraw that, your Honor. We did not know it was that far on.

Q. State if you know, which of these were taken between December, 1922 and August, 1923? (Witness indicates.)

[fol. 42] Mr. Owens: We would like to withdraw the offer of Exhibits Q, R, P and O. That is all.

Mr. Lawler: No cross-examination.

Mr. Owens: We offer Exhibit S, which is the Veterans Bureau regulations regarding permanent total disability.

Mr. Lawler: We are willing to concede that the court has judicial notice of that. It was passed pursuant to authority and is in force and effect as law.

E. B. Maynard, a witness heretofore sworn, recalled on behalf of plaintiff, further testified as follows:

Direct examination.

By Mr. Owens:

Q. I hand you plaintiff's Exhibit L and ask you to state, if you know of your own personal knowledge whether or not it is a correct record of clinical findings of Robert G. Meadows at Fitzsimons General Hospital?

A. It is in my custody as a correct clinical record. As I said, these were all made before I arrived at Fitzsimons Hospital.

Q. It covers the period, particularly, from February 21, 1923, to——

Mr. Lawler: Just a minute. We object. The record is not in evidence.

The Court: The record is not in evidence.

Q. You are custodian of those records?

A. Yes.

Q. And that is part of the record in Fitzsimons Hospital of this claimant?

A. It is.

Mr. Owens: We offer Exhibit L in evidence.

Mr. Lawler: We object; incompetent, irrelevant and immaterial; not the best evidence; not pertaining to any of the issues in the case.

Mr. Owens: I would like to ask just one more question of the witness.

Q. Do you recognize the various signatures on those slips?

A. I recognize my own, Captain Kirby, Major Rice, Major Beaven.

Mr. Owens: We offer Exhibit L in evidence.

[fol. 43] Mr. Lawler: We object.

The Court: Not properly proven; it will be excluded.

Mr. Owens: Exception.

Q. I hand you plaintiff's Exhibit M and ask you what that is, if you know?

A. It is the current clinical record of Robert G. Meadows, and papers, including extract from service record and various letters that were written in regard to this patient, and Veterans Bureau reports, that is, reports made to the Veterans Bureau.

Q. And those records are in your official custody at the Fitzsimons General Hospital?

A. All but the current record. That is in the custody of the ward in which he was a patient.

Q. They are permanent Government records?

A. Permanent Government records.

Mr. Owens: We offer Exhibit M in evidence.
Mr. Lawler: We object.
The Court: Objection sustained.
Mr. Owens: Exception. That is all.
Mr. Lawler: No cross-examination.

Robert G. Meadows, plaintiff, recalled in his own behalf, further testified as follows:

Direct examination.

By Mr. Owens:

Q. Mr. Meadows, how did you feel the first two or three months after Christmas 1923? Say January, February, March and April.

A. Felt the same all the time; pretty good at times and pretty badly at times.

Q. Did you ever go down town during that period?

A. I don't remember going down.

Q. Did you walk around?

A. In the ward.

Q. Could you have done any light work had you felt so disposed?

Mr. Lawler: We object; incompetent, irrelevant and immaterial.

The Court: Ask him what he did.

[fol. 44] Q. When you left the army in August, did you have to leave on account of your condition, or could you have continued on?

A. Well, that was not for me to decide. The C. D. D. Board decides that.

Q. Did they make you leave the army?

A. They recommended that I leave.

Q. That you not leave?

A. That I should leave.

Q. Would they have let you stay had you wanted to?

A. I don't know.

Mr. Owens: That is all.

Cross-examination.

By Mr. Lawler:

Q. This was in August, 1923?

A. The examination was in July, the 12th, and I was discharged on August 2d, 1923.

Q. When did you go to Fitzsimons General Hospital?

A. Arrived at Fitzsimons Hospital from Washington, D. C., on November 28, 1922.

Q. How long did you remain in Fitzsimons General Hospital?

A. I have been readmitted two or three times.

Q. After your first admission?

A. First admission was November 28th. Until August 2, 1923.

Q. November, 1922, to August, 1923?

A. Yes sir.

Q. How long did you work after you left the hospital?

A. I didn't leave; I was readmitted as a beneficiary of the Veterans Bureau.

Q. Same day?

A. Following day.

Q. How long did you remain in the hospital then?

A. Remained in the hospital until 1924 or 1925. I am not sure.

Q. Are you in the hospital at the present time?

A. Yes.

Q. Approximately how many months have you been out of the hospital since you went in in November, 1922?

Mr. Owens: We object as immaterial.

The Court: Overruled.

A. About six months all told.

Q. Were those six months before or after January, 1924?

A. They were after.

[fol. 45] Q. In other words, you were hospitalized continuously from November, 1922, until at least January, 1924?

A. Yes sir.

Q. Did you work at any gainful occupation from November, 1922?

A. I didn't work on salary; I worked in the ward for exercise.

Q. Around the hospital?

A. Yes. I was on graduated exercise.

Q. That was part of your treatment?

A. Treatment, yes.

Mr. Lawler: That is all.

Mr. Owens: That is all. We rest.

Thereupon the plaintiff rested his case.

Thereupon a recess was taken until two o'clock.

After Recess, Two P. M.

MOTION TO DISMISS

Mr. Lawler: If the Court please, we move at this time for dismissal of plaintiff's cause of action; First, because of the insufficiency of the evidence to establish a prima facie case; Secondly, because the evidence affirmatively shows that plaintiff was permanently and totally disabled at and prior to the time of his application for reinstatement; and, Thirdly, because the plaintiff has not shown that he was entitled to reinstatement of the $7,000 of lapsed insurance in question, under the provisions of section 408 of the War Risk Insurance Act, or section 304 of the World War Veterans Act, for the reason that there is no allegation or evidence, showing or tending to show that he submitted proof satisfactory to the Director of the United States Veterans Bureau that he was not permanently and totally disabled.

The Court: I would like to hear from the other side on that third ground. What have you to say on that?

Thereupon the court heard arguments of counsel; at the conclusion of which the court denied said motion of defendant for dismissal of plaintiff's cause of action, to which ruling of the Court the defendant then and there duly excepted.

Mr. Lawler: If the Court please, the Government rests. We have no further evidence in this case. All of the Government witnesses have been called and have testified in behalf of plaintiff.

[fol. 46] Thereupon the defendant rested its case.

Thereupon the plaintiff rested his case.

The above and foregoing, with accompanying exhibits constitutes all the evidence offered, given and received in this case, on behalf of both plaintiff and defendant.

OPINION

Thereupon the court delivered the following oral opinion:

SYMES, D. J.:

Section 5 of the World War Veterans Act gives the Director plenary power to administer, execute and enforce the provisions of the Act and full power and authority to make rules and regulations not inconsistent with the Act. It is agreed that, pursuant to that power, the Director made a definition of what permanent total disability should be under the provisions of this Act, and we must therefore look to his regulations and definition of that term in construing section 304.

The Government has offered no evidence in this case. The sole question, therefore, is whether the medical testimony of the plaintiff is sufficient to sustain the burden upon the plaintiff of proving that the plaintiff was not, in February, 1923, when he made his application for reinstatement of $7,000 of insurance that he allowed to lapse, permanently and totally disabled. In other words, we are required to pass upon the action of the Director taken under section 304. I think section 19 justifies this court in entertaining this suit, under circumstances disclosed. Further than that, section 5 seems to contemplate, and in fact provides that all decisions of questions of fact affecting any claimant

to the benefits of Title II, III or IV of the Act shall be conclusive, except as otherwise provided. The term "otherwise provided," I think has reference to section 19.

Referring to section 7035 of Regulation No. 73 of the Veterans Bureau, dated July 29, 1924, we find the medical definition of permanent total disability, when pulmonary tuberculosis is involved. Subsection 2 says, in effect, that tuberculosis, such as admittedly the plaintiff here had, could be considered permanent and total, when there is active pulmonary tuberculosis with continuous and progressing toxæma, as indicated by loss of weight, emanciation, elevation of temperature for a period of twelve months [fol. 47] with no improvement under proper supervision and treatment, and when it appears that the claimant will be unable continuously to follow a substantially gainful occupation.

There is no evidence in this case that the plaintiff had progressing toxaemia, or that he had any loss of weight, or any elevation of temperature. The evidence is that over a period beginning in December, 1922, and over into May or June, 1923, he showed a little progress. The most that could be said for the Government is that his condition was stationary. One of the medical experts who was put on the stand testified that during that period of time he improved a little, gained a little in weight. I do not see that there is any evidence at all that his disease was progressive or that he was getting worse, or that his case came within the definition that I have referred to. The evidence is that there was a slight increase in weight.

Some emphasis has been laid upon the fact that his lung was collapsed. As I understood the gentleman who testified on the witness stand, that is the result of the treatment and not an indication or symptom of disease, or if its progress. In other words, his lung was collapsed as a part of the treatment, and as a result he probably improved, if anything. It is also important to note that the tuberculosis did not affect his right lung. With the exception of one doctor, I think they all stated that his right lung was perfectly normal. It is hard to conceive that a man is permanently and totally disabled when he has one good lung. We can, I think, take judicial notice of the fact that there are hundreds of people in Colorado with only one

good lung, who are earning a living and sustaining themselves.

It seems to me that the action of the Director in grading this man as permanently and totally disabled was erroneous. Of course, the proof submitted to him may have been different from that before this court. We can only judge the case by the evidence submitted here. None of these doctors who have testified would say that this man is not capable of earning a livelihood, to a small extent. He will be under some permanent physical disadvantage, but that is true of thousands of people who are walking the streets and earning a living. Very few of us are a hundred per cent physically perfect. Most people have some disability.

The term "Total and permanent" is a very broad, expressive statement of one's physical condition. To me the word "permanent" means that there is no hope of im-
[fol. 48] provement or recovery; and the word "total" that the disability is complete. How can it be said that a man is totally disabled when he is up and about, doing a little work and performing graduated exercises under the direction of a physician, as the testimony shows this plaintiff was doing and was directed to do by the doctors at the hospital, experts fully able and competent to pass upon his case? I am of the opinion that there is no evidence that he was totally and permanently disabled within the definition given by the defendant itself, through the Director.

Judgment may, therefore, be entered in favor of the plaintiff and against the defendant.

Mr. Lawler: We except to the findings of the court.

Plaintiff's Exhibits

EXHIBIT A

United States Veterans Bureau, Washington.

July 6, 1925.

In reply to refer to: FABA. C-636,684.

Mr. Robert G. Meadows, Fitzsimons General Hospital, Denver, Colorado.

DEAR MR. MEADOWS: With further reference to your letter of May 25, 1925, regarding your appeal for a permanent

and total rating for insurance purposes from January, 1918, please be advised that on June 27, 1925, the Central Office Board of Appeals rendered a decision, holding the evidence in file is insufficient to show that your disability is ratable as permanent and total prior to August 2, 1923.

Accordingly, your appeal for a retroactive permanent total rating has been denied.

For the director.

Charles E. Mulhearn, Assistant Director.

[fol. 49] EXHIBIT B

United States Veterans Bureau, Washington.

August 6, 1925.

In reply Refer to: FABA. C-636684.

Mr. Robert G. Meadows, Fitzsimons General Hospital, Fitzsimons, Colorado.

DEAR SIR: Receipt is acknowledged of your letter of July 31, 1925, regarding the insurance status of your case.

In reply thereto please be advised that at the time the application for reinstatement and conversion of the $7,000 insurance was submitted, the evidence was sufficient, in the opinion of the Officials of the Bureau, to show that you were permanently and totally disabled. Accordingly, your application for reinstatement and conversion was rejected.

A subsequent decision of the Board of Appeals holds that at that time the disability was not in fact shown to be permanent and total. However, since rejection was made you have been declared permanently and totally disabled, and reinstatement cannot be effected under existing legislation at this time.

All future communications relative to this case should bear the number C-636684.

For the director,

Charles E. Mulhearn, Assistant Director.

EXHIBIT D

Form 561A, File No. C

Compensation Disability

United States Veterans' Bureau

Award of Compensation

To Mr. Robert G. Meadows, C-636684, Fitzsimons General Hospital, Fitzsimons, Colorado:

In accordance with the Act of Congress of October 6, 1917, and the amendments thereto, you are hereby notified [fol. 50] that as a 1st Sgt., Co. D, who was discharged from the military service of the United States on the 2nd day of August, 1923, you are awarded compensation in the amount of one-hundred dollars per month, from the 3rd day of August, 1923, on account of disability resulting from injury incurred in the line of duty while employed in the active service.

Important Provision of the Act

"Sec. 28. That the allotments and family allowances, compensation, and insurance payable under Article II, III and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Articles II, III, and IV, and shall be exempt from all taxation; Provided, That such allotments and family allowances, compensation, and insurance shall be subject to any claims which the United States may have, under Article II, III, and IV, against the person on whose account the allotments and family allowances, compensation, or insurance is payable."

If you should change your present address, the Claims Division, United States Veterans' Bureau, Washington, D. C. must be immediately notified. All future communications with reference to this case must bear the Compensation Number C636684.

By authority of the Director:

This 5th day of January 1924.

Charles E. Mulhearn, Assistant Director, Claims Division, United States Veterans' Bureau, by I. M. W.

EXHIBIT E

United States Veterans Bureau, Washington

April 7, 1923.

In reply Refer to T-300,952, C-636,684, 7-C-WER/lap.

Mr. Robert G. Meadows, Fitzsimons General Hospital, Fitzsimons, Colo.

[fol. 51] DEAR SIR: With further reference to your application for reinstatement of insurance granted you under Certificate Number T-300,952 and remittance of $191.13, forwarded by E. P. York, Field Director The American Red Cross, Fitzsimons General Hospital, under date of March 5, 1923, to be applied in connection with your application you are advised the medical evidence on file in the Bureau and that submitted with your application shows you are now permanently and totally disabled.

Section 408 of the War Risk Insurance Act provides for reinstatement if the insured is suffering from a disability incident to or aggravated by the service but not permanently and totally disabled, upon the payment of all premiums in arrears with interest at five per cent per annum compounded annually.

In view of the above, your application for reinstatement cannot be approved and the above mentioned remittance of $191.13 is returned to you.

By direction.

C. A. Pennington, Assistant Director, Insurance Division.

EXHIBIT F

United States Veterans Bureau, Washington

December 18, 1923.

In reply Refer to O. 33. C-636 684. Robert G. Meadows.

Mr. Robert G. Meadows, Fitzsimons General Hospital, Denver, Colorado.

DEAR SIR: Replying further to your letter of November 30th, you are informed that your tubercular disability has

been rated as permanent total from August 2, 1923. However, it will not be possible to prepare an award until re-
[fol. 52] port of physical examination requested under date of December 10th has been returned and considered.

By direction.

Charles E. Mulhearn, Assistant Director Claims Division.

EXHIBIT G

United States Veterans Bureau, Washington

December 31, 1923.

In reply Refer to C & C WTH:IH. C-636 684. Meadows, Robert G., Sgt. 1/c Co. 1 12th Inf.

Office of District Manager, District No. 11

Mr. Robert G. Meadows, Fitzsimons General Hospital, Fitzsimons, Colorado.

Through—Contact Officer

DEAR MR. MEADOWS: In connection with your claim for compensation kindly be advised that this office is in receipt of a communication from the Central Office which indicates that your disability is rated as permanent and total on and after August 2, 1923. As long as this rating remains in effect, your complete file will be retained in the Central Office.

Section 303 of the Act provides for the forfeiture of compensation for failure to report for examination, and you should, therefore, always advise this office of any change of address on your part. Also, all future communications relative to this case should bear your full name, address, rank and organization, as well as the number C-636 684.

By direction.

J. G. Burleson, Chief Claims Division.

[fol. 53] EXHIBIT H

United States Veterans Bureau, Washington

February 14, 1924.

In reply Refer to O 325. C-636 684 K-156 795. Meadows, Robert G. RPMcC/jac.

Mr. Robert G. Meadows, Fitzsimons General Hospital, Denver, Colorado.

DEAR SIR: In reply to your letter of February 4, 1924, relative to a refund of premiums paid subsequent to the commencing date of award of permanent and total disability benefits, you are advised that the records of the Bureau show that the award is effective from February 21, 1923 and the Bureau is entitled to premiums to include the month of February 1923. Premiums deducted from your service pay for the months of February, March, April, May and June 1923, paying premiums for March, April, May, June and July 1923, have been refunded to you There is no further refund due.

All communications relative to this case should bear the file numbers C-636 684 and K-156 795.

For the Director.

Charles E. Mulhearn, Ass't Director in Charge of Claims and Insurance Service.

EXHIBIT I

Form 55g

Medical Department, U. S. Army

(Authorized Jan. 17, 1916)

Clinical Record

Progress

(All complications, and all changes in diagnosis, with the date in each case, should be entered on this sheet.)

[fol. 54] Receiving Ward. Dec. 3, 1922. Meadows, Robert G., 1st Sgt. Co. "I" 12th Inf.

1. Tbc pul chr active upper lobe left, and upper part of left lower lobe. Cavitation left upper lobe.

(Signed:) J. A. Wilson, Major M. C.

Far Advanced (PR).

[B] Most of lesions on left offer old fibrous or caseo fibrous. There may be some new lesions in upper part of left lower: El. or no involvement on rt. a good case for Art Pneu. if progress is not satisfactory.

Affidavit: I, Robert G. Meadows, state that to my knowledge, this paper is an exact and true copy of a document in the files of the Medical Department concerning case of said Robert G. Meadows.

(Signed) Robert G. Meadows.

State of Colorado,
County of Adams, ss:

Personally appeared before me, Robert G. Meadows, who is known by me to be the person who signed the above statement, and who signed the statement above in my presence.

Thomas A. Brinkley, Notary Public. My commission expires Feb. 23, 1930. (Seal.)

Exhibit J

C-1.

Passed the CDD Board July 12, 1923. Findings: 1. Tuberculosis, pulmonary, Chronic, active, both lobes left, inactive right upper, cavity left upper.

2. Pneumothorax, complete, artificial, left.

Disability: 100% Temporary.

C. L. Beaven, Major, M. C., U. S. A.

A true copy. L. F. Putnam, Capt. M. C., U. S. A.
Meadows, Robert G.

(Here follow Exhibits K and S, side folios 55-66)

Plaintiff's Exhibit K

United States of America

United States Veterans Bureau

February 9, 1927

Pursuant to Section 30 of the World War Veterans' Act, 1924, I hereby certify that the annexed photostats of Form 739, Application for conversion of Government War Risk Insurance, signed Robert G. Meadows, January 27, 1920; and Form 742, Application for Reinstatement of Yearly Renewable Term Insurance, signed Robert G. Meadows, February 16, 1923, are true copies of the originals on file in the case of Robert G. Meadows, C-636,686

this Bureau.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States Veterans Bureau to be affixed on the day and year first above written.

Frank T. Hines

FRANK T. HINES
DIRECTOR OF THE
UNITED STATES VETERANS BUREAU

55-56

photostats of Form 739, Application for conversion of Government War Risk Insurance, signed Robert G. Meadows, January 27, 1920; and Form 742, Application for Reinstatement of Yearly Renewable Term Insurance, signed Robert G. Meadows, February 16, 1923, are true copies of the originals on file in the case of Robert G. Meadows, C-636,684

FRANK T. HINES

57-58

Lach 13

[M]EDICAL EXAMINATION

This examination is necessary only when an interval has lapsed for a period of more than three months.

1. APPLICANT'S OWN STATEMENT

1. Date of birth.	2. Place of birth.	3. Color.	4. Single, married, or widowed.
May 19 - 1892	New Jersey	White	Married

5. Family history.	Age if living.	Health good or bad. (If bad, give full details.)	Age at death.	Cause of death.	Age at death.
Father	59	good		died birth	
Mother	55	good.			
Sister (10)					
Sister					
Brother					

6. What operations have you had, if any, and when?	7. Have you ever used alcohol, opium, or other habit-forming drugs to excess?	8. Have you ever used habit-forming drugs?	9. What is your occupation?
Tonsil Clinic, Wis.	No		Soldier

10. Have you been treated for any disease of brain or nerves? No. Fever? No. Epilepsy? No. Insanity? No. Kidney disease? No. Stomach trouble? No. Rheumatism? No. Heart trouble? No. Lung trouble? No. Tuberculosis? No. Asthma? No. Hay fever? No. Skin disease? No. Piles? No. Rupture? No. Varicose veins? No. Any other illness or injury? (Answer "Yes" or "No" in each case. If "Yes," give full particulars, including name and address of physician or hospital in which treatment was received, and approximate dates of treatment.)

Now under treatment for pulmonary tuberculosis

11. Are you fully vaccinated?	12. I hereby certify that my answers to the foregoing questions are true and complete to the best of my knowledge and belief.
No	Signed by applicant in the presence of Medical examiner on this 21 day of Feb, 1923. Robert G Meadows (Signature of applicant)

2. PHYSICAL EXAMINATION'S REPORT

13. Height in shoes.	14. Weight in shoes and clothes.	15. Chest at chest normal.	16. Chest at abdomen.
5 ft. 7 inches	No. of pounds 134 lbs.	Forced expansion 4 ins. Total expansion 3 lbs.	30

17. State vision.	18. Vision corrected or otherwise?
(a) Vision unaided: right eye 6/6 left eye 6/12. (b) Vision after correction: right eye 6/6 left eye 6/6.	Yes 110 No 75 Instrument used

19. After an examination do you find any abnormality of the heart? No. Lungs? No. Any hernia? No. Any varicose veins? No. Any defect of hearing? No. Any other defect, ailment, or chronic disease? No. If "Yes," state which. Tuberculosis of Lungs active Left Side. Left side typical Pneumothorax Left, induced.

20. Blood pressure.	21. Urine examined.	22. Wassermann test.	23. Is applicant free from evidence of venereal disease?
102	Albumin neg Sugar neg	Time used	Date of examination Yes

24. Has applicant ever had epilepsy, fits, or convulsions?	25. Has he ever had delirium tremens?	26. Is he addicted to the use of alcohol to excess?
No	No	No

27. Has he ever had syphilis, local or constitutional?	28. Is he under treatment or has he been treated for any venereal disease?	29. Is he now suffering from any disease of the genito-urinary organs?
No	Yes Tuberculosis	Date of last menstrual period. Is pregnancy suspected?

30. Has applicant ever been under observation for mental disease in any hospital or institution? If so, when and where?

No Tuberculosis Ward Hosp

31. Is he addicted to the habit of masturbation? Has he ever been subject to any sexual perversion? Has he ever had any nervous breakdown? Has he ever had any serious illness not mentioned above? If so, when and where? Has he ever had any surgical operation? If so, what and when? Has he ever had any injury to head or spine? If so, when and what were the results?

Yes

32. Remarks:

Opinion (Not Total & permanent) by

Examination completed this 21 day of Feb, 1923.

Missouri

Capt H Robert Capt MC US

(Signature of examining medical officer.)

(Rank.)

(Address of examining medical officer.)

NOTE.—Should applicant be over-weight, (a) obtain applicant's height and weight stripped, (b) ascertain chest measurement, (c) ascertain whether applicant is a person of sedentary habits, (d) ascertain whether applicant is a person whose habits of life are active, (e) ascertain whether applicant is a person who has recently undergone a material loss of weight, (f) ascertain whether applicant is a person who has been under treatment for obesity, (g) ascertain whether applicant is a person who has been under treatment for any disease, (h) ascertain whether applicant is a person who has been under treatment for any injury, (i) ascertain whether applicant is a person who has been under treatment for any operation, (j) ascertain whether applicant is a person who has been under treatment for any other condition, (k) ascertain whether applicant is a person who has been under treatment for any other condition, (l) ascertain whether applicant is a person who has been under treatment for any other condition, (m) ascertain whether applicant is a person who has been under treatment for any other condition, (n) ascertain whether applicant is a person who has been under treatment for any other condition, (o) ascertain whether applicant is a person who has been under treatment for any other condition, (p) ascertain whether applicant is a person who has been under treatment for any other condition, (q) ascertain whether applicant is a person who has been under treatment for any other condition, (r) ascertain whether applicant is a person who has been under treatment for any other condition, (s) ascertain whether applicant is a person who has been under treatment for any other condition, (t) ascertain whether applicant is a person who has been under treatment for any other condition, (u) ascertain whether applicant is a person who has been under treatment for any other condition, (v) ascertain whether applicant is a person who has been under treatment for any other condition, (w) ascertain whether applicant is a person who has been under treatment for any other condition, (x) ascertain whether applicant is a person who has been under treatment for any other condition, (y) ascertain whether applicant is a person who has been under treatment for any other condition, (z) ascertain whether applicant is a person who has been under treatment for any other condition.

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UNITED STATES VETERANS BUREAU
Form 748 Revised

APPLICATION FOR REINSTATEMENT OF YEARLY RENEWABLE TERM INSURANCE

Medical Examination on the other side is also required

1 MY NAME IN FULL First Robert M. Last Meadows — 2. Term insurance certificate number 300-952

3 HOME ADDRESS (number) (street) (city, town, or post office) (state) R.F.D. 156 795

MAILING ADDRESS Fitzsimons General Hospital, Fitzsimons, Colo.

4. I hereby apply for the reinstatement of $ 7,000.00 term insurance granted to me under the provisions of the War Risk Insurance Act, and I have enclosed to pay the premium for the month of February 1923 or within the grace period of 31 days. As a condition to the reinstatement of this insurance, I do hereby certify that the answers to the following questions are true to the best of my knowledge and belief.

5. Are you in good health at this time and were you in good health on the date of the premium in default? No

6. Are you at present under any treatment for any disability which is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active service of the United States during the World War? (If so, give full details as to the nature of such disability, disease, or injury, where and when contracted, and what treatment, if any, is being received at this time)

Yes - Tuberculosis October 1922 - Ft. Washington, Md. Came in off of a hike and started throwing hemorrages.

C-636-684

1-4-23

No

7. Have you ever made application for Government compensation or pension? If so, state when and where filed and for what disability. 9. Give name of your company.

Yes No

U.S.

10. Have you consulted any doctors or medical authority since issue of this insurance? If so, state full particulars, date, nature, and address of physicians. If none state so.

Yes - Tuberculosis Army doctors and physicians at Ft. Washington, Md. Walter Reed, Hospital and Fitzsimons General Hospital.

11. Have you received a physician as regard to your health since issue of this insurance? If so, state name and address of physician.

Yes - Army Physicians

RECEIVED
Under Sec. 408 of the Act
BY W. S. McClintic
Law Medical Section U.S.

12. It is agreed that the effective date of this reinstatement, if reinstated, shall be the date of the receipt of the application, provided the premium herein applied for is then paid, and provided the applicant complies with the requirements of the Bureau in writing that the effective date shall be the first day of the month in which the application is received, provided the premium

K156795 WAR RISK INSURANCE

APPLICATION FOR CONVERSION OF GOVERNMENT WAR RISK INSURANCE.

MAY 17 1920
RR 13 MAIL SECTION

Application for conversion of the Yearly Renewable Term Insurance issued in accordance with the provisions of the War Risk Insurance Act.

My full name is Robert (First) G. (Middle) Meadows (Last)

Home address 219 E. Ninth St. (No. and street or R.F.D. route) Junction City, (City, town, or P.O.) Kansas. (State)

I was born on May 19th, 1892 (Month) (Year)

Organization at time of applying for War Risk Term Insurance: Flat River, No. Co. "D" 61st Infantry. (Organization, regiment, station, ship, etc.)

1st. Sgt. (Rank or rating)

Present organization or organization at date of discharge:

1st. Sgt. Co. "H" 55th Infantry. (Organization, regiment, station, ship, etc.)

(Rank or rating)

Amount of Government Term Insurance, $ 10,000.00 Monthly premium paid. $ 6.70

Last month for which premium was paid December, 1919.

Certificate No (if known to you) Unknown Army serial number A - 907866 (If such number has been assigned to you)

I apply for United States Government Life Insurance of $ 3,000.00 on the following plan

	ORDINARY LIFE.
X	20 PAYMENT LIFE
	30 PAYMENT LIFE.
	20 PAYMENT ENDOWMENT.
	30 PAYMENT ENDOWMENT.
	ENDOWMENT MATURING AT AGE 62

Put cross mark (X) opposite plan selected.

I will pay premiums

X	MONTHLY.
	QUARTERLY.
	SEMI-ANNUALLY.
	ANNUALLY.

(Put cross mark (X) opposite method selected.)

It is agreed that this insurance is not to be issued or take effect until the application therefor has been approved by the Bureau of War Risk Insurance, and that the insurance applied for shall take effect on the first of the month succeeding the date of the approval of the application, or at the option of the applicant shall take effect on the first day of the current month, but no Yearly Renewable Term insurance payable on the death of the insured during the current month for which the premium hereunder has not been paid shall be in force, and no insurance shall be in force on the life of the insured unless the first premium thereon has been paid.

BENEFICIARY OR BENEFICIARIES OF INSURANCE HEREIN APPLIED FOR IN CASE OF MY DEATH.

RELATIONSHIP TO ME	NAME OF BENEFICIARY (If married woman, her own christian name must be stated) (First) (Middle) (Last name)	POST-OFFICE ADDRESS (a) Number and street (b) City, town, or P.O. and State
Wife	Daisy Gertrude Meadows	a. 219 E. Ninth St. b. Junction City, Kansas.
		c. d. e. f. g. h. i.

SEND POLICY TO WIFE AT ABOVE ADDRESS.

In addition to the insurance above applied for I wish to continue $ of the insurance on the Yearly Renewable Term Plan heretofore granted to me and, in consideration of the granting of the United States Government Life Insurance herein applied for, I hereby agree that all my rights and interests in and to said contract of Yearly Renewable Term Insurance heretofore granted me under the War Risk Insurance Act shall cease and determine on the day the insurance herein applied for shall take effect. The contract of Yearly Renewable Term Insurance which I hereby elect to have shall be in lieu of the following beneficiaries. Any previous designation of beneficiaries is hereby revoked.

BENEFICIARY OR BENEFICIARIES OF YEARLY RENEWABLE TERM INSURANCE HEREIN RETAINED.

RELATIONSHIP TO ME	NAME OF BENEFICIARY (If married woman, her own christian name must be stated) (First) (Middle) (Last name)	POST-OFFICE ADDRESS (a) Number and street (b) City, town, or P.O. and State
		a. b. c. d.

LAST DEDUCTION FOR WAR RISK INSURANCE WILL BE MADE ON JANUARY 1920 PAYROLL.
SECOND MONTHLY PREMIUM ON CONVERTED INSURANCE WILL BE DEDUCTED ON MARCH 1920 PAYROLL.

Executed at CAMP FUNSTON, KANSAS.

By me, (Signature) R. H. TAYLOR, JR. 2nd. Lieut. Infantry, U.S.A. CAMP INSURANCE OFFICER.

(SIGN HERE) Robert G. Meadows

I have herewith remittance payable to the TREASURER OF THE UNITED STATES by (Draft / Money Order / Check) in the amount of $ 5.94 to cover the first monthly premium on the converted insurance.

(SIGN HERE) Robert G. Meadows

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300-452

Plaintiff Exhibit "S"

CHIEF, REHAB. SECTION,

DENVER SUB-OFFICE.

U.S. VETERANS BUREAU July 29, 1924.

REGULATION NO. 73.

Subject: RATING OF TUBERCULOUS DISEASES.

By virtue of the authority contained in Section 5 of the World War Veterans' Act, approved June 7, 1924, the following Regulation, effective August 13, 1924, is issued relative to the general principles to be observed in rating tuberculous diseases, cancelling and superseding Sections 7030 to 7041 inclusive of Regulations, U.S.V.B., 1923, to read as follows and to be incorporated in Regulations, 1923, as Sections 7031 to 7037 inclusive.

Frank T. Hines

FRANK T. HINES,
Director.

[fol. 67] PLAINTIFF EX. "S"

Regulations U. S. V. B. 1923

Section 7031. Where no disease or injury is shown to have occurred during active military or naval service in the World War, on or after April 6, 1917, and before July 2, 1921, that could by scientific criteria be considered as a usual and proximate cause of tuberculous disease, and where an active tuberculous disease of ten per cent degree or more in accordance with the U. S. Veterans' Bureau Schedule of Ratings is shown to have developed prior to January 1, 1925, such active tuberculous disease will be considered as incident to service, in accordance with the second proviso of Section 200 of the World War Veterans' Act, approved June 7, 1924.

(a) The showing of active tuberculous disease of ten per cent degree or more prior to January 1, 1925, will be contingent upon reports of physical examination, physician's statements and acceptable lay affidavits, citing the facts that would demonstrate the existence of such condition. Lay affidavits when relevant, competent and material, will be given due consideration in connection with the other evidence submitted; such affidavits to be acceptable must be confined to statements of fact and not of opinion.

(b) In all cases of active tuberculous disease where the facts submitted in substantiation of the claim do not show that the disability was incurred in or aggravated by service, and where there is no showing of tuberculous disease of ten per cent degree of disability or prior to January 1, 1925, a finding will be made that the disability is not connected with service.

Section 7032. In all cases where the facts submitted do show that the tuberculous disability was incurred in or aggravated by service, the condition will be considered as directly connected with service.

Section 7033. A diagnosis of Active Pulmonary Tuberculosis will be considered as established where two or more of the following findings are shown:

(a) Sputum positive for tubercle bacilli.

(b) Pleurisy with effusion.

(c) Cavity or pneumo-thorax diagnosed by stereogram and physical examination.

(d) Active tuberculous lesion evidenced by definite physical findings indicating a tuberculous involvement, most [fol. 68] characteristic of which are typical indeterminate, localized, persistent, moist rales, (commonly called crepitant and subcrepitant), in the upper lobes, increased or manifested on the first inspiration after a forced expiration followed by a cough.

(e) X-ray findings, of which roentgenograph stereograms manifesting cottony densities, cirrus clouding, or areas of rarefaction surrounded by annular shadows interpreted as cavities, diagnostic of tuberculous infiltration, caseation, or savitation, are the most important. (Unsupported X-ray findings will not, however, be accepted as conclusive evidence of activity.)

(f) Active tuberculous lesion, evidence by definite toxaemia of probable tuberculous origin, manifested by one or more of the following symptoms: fever, loss of weight and rapid "resting" pulse.

Section 7034. The following signs will not be regarded as evidence of pulmonary disease in the absence of other signs in the same portion of the lungs.

(a) Slightly harsh breathing, slightly prolonged expiration over the right apex above the clavicle anteriorly and to the third dorsal vertebra posteriorly. The same signs at the extreme apex, left side.

(b) Same signs second interspace right, anteriorly, near sternum (proximity of right main bronchus).

(c) Increased vocal resonance, slightly harsh breathing immediately below center of left clavicle.

(d) Fine crepitations over sternum, heard when stethoscope touches the edge of that bone.

(e) Clicks heard during strong respirations or after cough in the vicinity of the sterno-costal articulations.

(f) The so-called atelectatic rales heard at the apex during the first inspiration which follows a deeper breath than usual, or a cough.

(g) Sound resembling rales at base of lung (marginal sounds) especially marked in right axilla, limited to inspiration.

(h) Similar sounds heard at apex of heart on cough. (lingula)

(i) Slightly prolonged expiration at left base posteriorly. [fol. 69] (j) Very slight harshness of respiratory sounds with prolonged expiration in the lower paravertebral regions of both lungs posteriorly, most marked at above angle of scapula, disappearing a short distance above that point, equal on both sides, or slightly more marked at the angle of one side, more frequently the left.

(k) In the presence of a strongly positive Wassermann reaction and in cases of hookworm disease with ova demonstrated in the feces, the presence of moist rales in the chest will not be considered in itself as a diagnostic sign of active pulmonary tuberculosis.

Section 7035. Permanent and Total. Pulmonary tuberculosis will be considered permanent and total under the following conditions:

(a) When active pulmonary tuberculosis with continuous and progressing toxaemia, as indicated by loss of weight, emaciation, elevation of temperature, etc., has continued throughout a period of 12 months or longer with no improvement under proper supervision and treatment, and when it appears that the claimant will be unable continuously to follow a substantially gainful occupation. The rating of permanent total disability will be made beginning as of the date that examination report shows the claimant to be unimproved after the one year's continuous observation and treatment, upon which the opinion of inability to follow a substantially gainful occupation is predicated.

(b) Pulmonary tuberculosis, active, involving both lungs, with large cavity formation in one or more lobes. The rating for permanent disability will begin as of the date proper examination, physical and X-ray, has shown the existence of such condition.

(c) Active pulmonary tuberculosis associated with serious tuberculous complications, such as tuberculous ulcerative laryngitis, or tuberculoses of the intestinal tract, or tuberculosis of the genitourinary tract, or tuberculosis of the peritoneum, or tuberculosis of the bones or joints, or tuberculosis of the meninges, or acute military tuberculosis, when diagnosed by approved methods. The rating of permanent total disability will begin as of the date that proper

(c) Cavity or pneumo-thorax diagnosed by stereogram and physical examination.

(d) Active tuberculous lesion evidenced by definite physical findings indicating a tuberculous involvement, most [fol. 68] characteristic of which are typical indeterminate, localized, persistent, moist rales, (commonly called crepitant and subcrepitant), in the upper lobes, increased or manifested on the first inspiration after a forced expiration followed by a cough.

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(i) Slightly prolonged expiration at left base posteriorly. [fol. 69] (j) Very slight harshness of respiratory sounds with prolonged expiration in the lower paravertebral regions of both lungs posteriorly, most marked at above angle of scapula, disappearing a short distance above that point, equal on both sides, or slightly more marked at the angle of one side, more frequently the left.

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Section 7035. Permanent and Total. Pulmonary tuberculosis will be considered permanent and total under the following conditions:

(a) When active pulmonary tuberculosis with continuous and progressing toxaemia, as indicated by loss of weight, emaciation, elevation of temperature, etc., has continued throughout a period of 12 months or longer with no improvement under proper supervision and treatment, and when it appears that the claimant will be unable continuously to follow a substantially gainful occupation. The rating of permanent total disability will be made beginning as of the date that examination report shows the claimant to be unimproved after the one year's continuous observation and treatment, upon which the opinion of inability to follow a substantially gainful occupation is predicated.

(b) Pulmonary tuberculosis, active, involving both lungs, with large cavity formation in one or more lobes. The rating for permanent disability will begin as of the date proper examination, physical and X-ray, has shown the existence of such condition.

(c) Active pulmonary tuberculosis associated with serious tuberculous complications, such as tuberculous ulcerative laryngitis, or tuberculoses of the intestinal tract, or tuberculosis of the genitourinary tract, or tuberculosis of the peritoneum, or tuberculosis of the bones or joints, or tuberculosis of the meninges, or acute military tuberculosis, when diagnosed by approved methods. The rating of permanent total disability will begin as of the date that proper

examination, physical and X-ray, shows such complications to exist.

(d) Active pulmonary tuberculosis, far advanced, with involvement of three or more lobes, and evidence of marked tuberculous toxaemia. The rating of permanent total dis- [fol. 70] ability will begin as of the date of examination, physical and X-ray, shows such lung involvement and tuberculous toxaemia are present.

(e) Claimants carrying a permanent total disability award for active tuberculosis, pulmonary or otherwise will be re-examined at intervals of eighteen months, and the award continued or reduced in accordance with the findings at such re-examinations will be made by a board in accordance with the provisions of Regulation 47.

Note: The conditions defined in the foregoing paragraphs (a) to (d) as representing permanent total disability are intended as clinical pictures for the better guidance of rating officers in arriving at a judgment of what constitutes permanent total disability from pulmonary tuberculosis. However, they are not to be considered to the exclusion of the provision of Regulation No. 4 (B IV (b)). On the contrary, the criteria in that regulation, i. e., that

"when from the evidence submitted it is determined that a person has suffered an impairment of mind or body of a degree which would render the average man incapable of following continuously a substantially gainful occupation, and it furthermore appears reasonably certain that such degree of disability will continue throughout the life of the disabled person" * * *

will govern above any other consideration in determining permanent total disability; and where there is acceptable evidence to show that the claimant was actually permanently and totally disabled, in accordance with the definition of Regulation No. 4 just quoted, the rating officer may carry the rating as sufficiently far back of the date of report of physical findings indicating permanent total disability, as is clearly justified by the other evidence submitted.

Section 7036. Temporary Total. Tuberculosis will be considered as temporary total disability under the following conditions:

I. In Hospitals.

(a) Whn active tuberculosis, pulmonary or otherwise, has been established as existent after a proper period of hospitalization for observation and diagnosis by approved methods, a rating temporary total will be given, beginning as of the date it is shown by the evidence of fact in the file that the claimant was industrially totally disabled by active tuberculosis.

[fol. 71] II. At Home.

(a) Beneficiaries with active tuberculosis who have been hospitalized for a continuous period of one year, under proper medical supervision; whose condition, it is adjudged will not reach arrest by further hospitalization; whose discharge from hospital will not be prejudicial to themselves or their families; who are not considered feasible for vocational training; and, who upon their request are to be discharged from hospital, will be examined by a board of three physicians, in accordance with the provisions of Regulation No. 47. If it is the opinion of the said board that permanent total disability is existent, the case will be referred to the Central Office with recommendation for permanent total rating. If the recommendation is approved by Central Office, such rating will be applied. If not approved, the claimant will be continued on a temporary total rating for a period of three years following discharge from hospital, unless he requests re-examination to determine whether he is permanently totally disabled, in which event such re-examination will be made as soon as possible after such request, and due consideration given to the propriety of a permanent total rating.

(b) Where permanent total disability is not found and so rated after re-examination requested by the claimant at any time during the three year period following his discharge from hospital, the temporary total rating will be continued. Six weeks before the expiration of the three year period following discharge from hospital, the claimant will be re-examined, in accordance with Regulation No. 47, and the rating subsequent to the ending of the three year period will be based upon the physical findings reported at this examination.

(c) Beneficiaries whose discharge from hospital is not disapproved by the hospital head will be so discharged if proper investigation by the regional or suboffice discloses

the following necessities of home environment:—a sanitary domicile where reasonable comforts and care can be provided, such as a well-ventilated room or porch, good food, fresh air, etc.; relatives or friends who can assume the obligations of continued nursing care, who know how to properly safeguard themselves from infection by proper disposition of sputum, and who can furnish, on forms supplied by the U. S. Veterans' Bureau, the information necessary for clinical and nursing follow-up supervision; feasibility of keeping infants and young children from the patient; facilities to provide for not less than 18 hours a day in bed or in "curing-chair."

[fol. 72] (d) Beneficiaries suffering from active tuberculosis who have not had one year's continuous hospitalization under proper medical supervision, but who fulfill all other conditions specified in the foregoing paragraph (a), and who, for good reasons, are permitted discharge from hospital to their homes, will be continued on temporary total rating until the condition is definitely arrested, as established by proper examination, physical and X-ray. These examinations will be made at intervals of twelve months. Following definite arrest, the rating of temporary total will be discontinued in accordance with the provisions of Section 205 of the World War Veterans' Act, final paragraph. Thereafter, the claimant will be carried on a rating of 75% temporary partial for a further period of three months following the effective date of discontinuance of the temporary total rating, so as to permit him to adjust himself to his industrial environment.

(e) Beneficiaries whose tuberculous disease, after one year's continuous hospitalization under proper medical supervision, has reached complete arrest and who, for that reason, are discharged from hospital will be rated temporary total for six months following such discharge. Reexamination in these cases will be made six weeks before the expiration of the six months' period referred to, and the subsequent rating will be based upon the findings reported at that examination.

(f) Where active pulmonary tuberculosis is actually disabling to a total degree, as shown by physical signs and X-ray findings, and the clinical picture conforms to that described under C in the "Schema for Classification of Patients on Examination," (Sp. Dist. Mgr. Letter, Med.

Div., No. 5, Nov. 8, 1922), a rating of temporary total will be given. That rating will continue until physical examination, to be made every twelve months, shows a change in the condition calling for modification of the rating.

Section 7037. Cases of tuberculosis, pulmonary and otherwise, not comprehended under the foregoing section relating to ratings of permanent total and temporary total, will be rated in accordance with the U. S. V. B. Schedule of Ratings.

STIPULATION AS TO PLAINTIFF'S EXHIBITS, "L," "M," "N"

Plaintiff's Exhibits L and M, being voluminous clinical records of Plaintiff, and Plaintiff's Exhibit N, being X-ray plate of plaintiff, cannot conveniently accompany the bill of [fol. 73] exceptions and be made a part thereof; and it is therefore stipulated and agreed by and between counsel for the respective parties that either party may produce any or all of said exhibits at the argument in the Appellate Court.

George Stephan, United States Attorney, L. A. Lawler, Richard A. Toomey, R. H. Blackman, Attorneys for Plaintiff. S. R. Owens, Attorneys for Defendant.

APPROVED OF BILL OF EXCEPTIONS BY DISTRICT JUDGE AND COUNSEL

And now for asmuch as the above and foregoing matters and things do not fully appear of record, the defendant tenders this its Bill of Exceptions by it reserved herein, and prays that the same may be allowed, signed and sealed by the Judge of this Court and filed and made a part of the record in said cause, pursuant to the statute in such case made and provided, which is accordingly done on this 21st day of December, A. D. 1927.

J. Foster Symes, District Judge. (Seal.)

Approved: S. R. Owens, Attorney for Plaintiff. George Stephan, Roy H. Blackman, Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT—Filed Dec. 21, 1927

The Clerk will issue a transcript of the record in the above-entitled cause for filing in the United States Circuit Court of Appeals, embracing the following:

Original Petition.

Summons.

[fol. 74] Amended Petition, including Stipulation attached thereto.

Defendant's Answer to Amended Petition.

Stipulation waiving jury and agreeing that issues may be tried and determined by the Court.

All Orders.

Judgment.

Defendant's Motion for New Trial.

Petition for Writ of Error and Assignment of Errors.

Order allowing Writ of Error.

Citation.

Complete transcript of proceedings, including plaintiff's Exhibits "A" to "S" inclusive.

George Stephan, United States Attorney for the District of Colorado. R. H. Blackman, Assistant United States Attorney for the District of Colorado.

IN UNITED STATES DISTRICT COURT

WRIT OF ERROR AND CLERK'S RETURN—Filed December 21, 1927

UNITED STATES OF AMERICA,
District of Colorado, ss:

The President of the United States of America to the Honorable the Judge of the District Court of the United States, for the District of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you at the May Term, 1927, thereof, between Robert G. Meadows, Plaintiff, and The United States of America, Defendant, a manifest error hath happened, to

the great damage of the said The United States of America, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States [fol. 75] Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 18th day of February, 1928, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 21st day of December, in the year of our Lord, one thousand nine hundred and twenty-seven, and of the Independence of the United States, the 152nd year. Issued, at office in the City and County of Denver, in said District, with the seal of the District Court of the United States for the District of Colorado, and dated as aforesaid.

Charles W. Bishop, Clerk United States District Court, District of Colorado. (Seal U. S. Dist. Court Dist. of Colorado.)

Allowed by J. Foster Symes, Judge.

Return

The United States of America,
District of Colorado, ss:

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof I hereunto subscribe my name, and affix the seal of the District Court of the United States for the District of Colorado, at the City and County of Denver, in said District, this fourteenth day of January A. D. 1928.

Charles W. Bishop, Clerk. (Seal U. S. Dist. Court Dist. of Colorado.)

[fol. 76] Citation, in usual form, showing service on S. R. Owens, filed December 21, 1927, omitted in printing.

[fol. 77] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 78] Appearances of counsel omitted in printing.

[fol. 79] Minute entry of submission of motion to strike bill of exceptions omitted in printing.

[fol. 80] In United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1928

No. 8082

United States of America, Plaintiff in Error,

vs.

Robert G. Meadows, Defendant in Error

In Error to the District Court of the United States for the District of Colorado

On Motion of the Defendant in Error to Strike Bill of Exceptions from the Record

Mr. George Stephan, United States Attorney; Mr. Forrest C. Northcutt, Assistant United States Attorney; Mr.

L. A. Lawlor, Attorney, U. S. Veterans' Bureau; Mr. Richard A. Toomey, Regional Attorney, U. S. Veterans' Bureau, and Mr. James T. Brady, Attorney, U. S. Veterans' Bureau, filed brief for plaintiff in error.

Mr. S. R. Owens filed brief for defendant in error.

Before Booth and Cotteral, Circuit Judges, and Reeves, District Judge

OPINION ON MOTION TO STRIKE BILL OF EXCEPTIONS—Filed Dec. 3, 1928

COTTERAL, Circuit Judge, delivered the opinion of the court.

The defendant in error has filed a motion to strike the bill of exceptions from the record in this case, on the grounds that it was not settled in time and is not in proper form.

[fol. 81] The transcript returned with the writ of error shows that the trial of the cause occurred on July 28, 1927, at the May term in that year, judgment was rendered and a motion for a new trial was denied on September 27, 1927, during that term, the term was adjourned sine die on October 31, 1927, and the bill of exceptions was presented to the District Judge and settled on December 21, 1927, without any order being made extending the time therefor and after the time allowed by Rule IX of the District Court, which provides:

"Exceptions taken to rulings of the court shall be put in form and delivered to adversary counsel within sixty days next after they are alleged. When taken in the course of a trial the sixty days shall begin from and after the last day of the trial. Adversary counsel shall be at liberty to note objections to form or substance of such exceptions within ten days next after receiving the same and to ask the attention of the court thereto within the same time. If needful the court will appoint a time for hearing the exceptions."

We find no difficulty in concluding that the purported settlement of the bill of exceptions was unauthorized and

ineffectual to incorporate the trial proceedings in the record of this case. After a trial term expires, such exceptions may not be settled, unless the time for presenting them has been extended by order or rule of court. Exporters v. Butterworth Judson Co., 258 U. S. 365; Farmers Union Grain Co. v. Hallet & Carey Co., 21 Fed. (2d) 42; Great Northern Life Ins. Co. v. Dixon, 22 Fed. (2d) 655; Cudahy Packing Co. v. City of Omaha, 24 Fed. (2d) 3; Coleman v. U. S., 26 Fed. (2d) 870.

As no extension of time was granted to the plaintiff in error beyond the trial term by an order or rule of the court, we find it necessary to sustain the motion to strike the bill of exceptions from the record. It is so ordered. The further ground of the motion requires no consideration.

[fol. 82] In United States Circuit Court of Appeals

Order Sustaining Motion to Strike Bill of Exceptions, etc.—December 3, 1928

This cause came on to be heard on the motion of defendant in error to strike the bill of exceptions from the record, and in accordance with the opinion this day filed, It is now here ordered by this Court that said motion, be, and the same is hereby, sustained, and the bill of exceptions is hereby stricken from the transcript of the record from the said District Court.

And it is further ordered by this Court that this cause, be, and the same is hereby, assigned for hearing of any questions which do not require a consideration of the bill of exceptions at the foot of the calendar for Wednesday, January 9, 1929.

December 3, 1928.

Minute entry of argument and submission January 9, 1929, omitted in printing.

[fol. 83] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Before Stone, Lewis, and Cotteral, Circuit Judges

OPINION—Filed Mar. 19, 1929

STONE, Circuit Judge, delivered the opinion of the court.

This is an action (filed June 18, 1926) by Robert G. Meadows against the United States to reinstate a lapsed Veterans' insurance policy. From a judgment, after trial, requiring such reinstatement, the United States brings this writ of error.

A motion to strike the bill of exceptions herein has been sustained (United States v. Meadows, opinion filed December 3, 1928), so that the matter comes before us only on the record proper. The main question urged upon this writ of error is the lack of jurisdiction in the trial court to entertain this suit.

[fol. 84] The amended petition alleges a policy for $10,000 of War Risk insurance issued defendant in error; that about February 1, 1920, $3,000 of this policy was converted to a twenty payment life policy and the remaining $7,000 allowed to lapse; that about February 21, 1923, the plaintiff made a written application for the reinstatement and conversion of the remaining $7,000 of the original policy and tendered the necessary premiums and interest; that in making such application, he "complied with any and all the terms of the War Risk Insurance Act and the amendments thereto, and any and all U. S. Veterans' Bureau rules and regulations pertaining to such application. That at the time said application was made, the plaintiff was suffering from a disability, to-wit, tuberculosis (pulmonary) of a degree less than permanent and total disability;" that the defendant "erroneously and contrary to the terms of the War Risk Insurance Act and amendments thereto rejected and refused the plaintiff's application;" and that plaintiff was and is entitled to the reinstatement and conversion sought and again offers and stands willing, ready and able to pay the necessary premiums therefor. An answer to the amended petition was filed which, among other defenses,

alleged that, at the time the application for reinstatement was submitted and since November 28, 1922, the plaintiff was permanently and totally disabled. These pleadings make it clear that the real issue tendered at the trial and concerning which evidence was introduced, was as to the existence or non-existence of permanent disability at the time the application for reinstatement was submitted. Obviously, this was a question purely of fact.

Whether the trial court had jurisdiction of this character of controversy depends upon the proper construction of two sections of the law relating to War Risk insurance. The first of these is Section 2 of the Act of August 9, 1921 (42 Statutes, 148), which provides that the Director of the Veterans' Bureau "subject to the general direction of the President, shall administer, execute and enforce the provisions of this Act, and for that purpose * * * shall decide all questions arising under this Act except as otherwise provided herein."

The second provision is in Section 19 of the Worlds War Veterans' Act (Act of March 4, 1925, 43 Statutes, 1302), which provides:

[fol. 85] "In the event of disagreement as to claim under a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies."

It has been repeatedly determined that the grant of power given to the Director by Section 2 of the Act of 1921, to decide questions of fact, cannot be challenged, unless the controversy falls within Section 19 of the Act of 1924, or unless such decision is "wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious" (United States v. Williams, decided January 2, 1929; Silberschein v. United States, 266 U. S. 221, 225; Armstrong v. United States, 16 Fed. (2d) 387, 389, this court; United States v. Edwards, 23 Fed. (2d) 477, 479, this court). There is no allegation in this petition that the

action of the Director upon this matter was wholly unsupported by evidence or wholly dependent upon a question of law or clearly arbitrary and capricious. The only allegation is that the Director acted "erroneously and contrary to the terms of the War Risk Insurance Act and amendments thereto." In Silberschein v. United States, 266 U. S. 221, 225, the Supreme Court stated that (p. 225):

"The general allegations of the petition that the Director's decision was arbitrary, unjust and unlawful, and a usurpation of power, are merely legal conclusions. Clearly, the petition does not present a case where the facts are undisputed and the only conclusion properly to be drawn is one favorable to petition, or where the law was misconstrued, or where the action of the executive officer was arbitrary or capricious."

Obviously, the allegations in the present petition fall far short of charging any such action upon the part of the Director as would give this court jurisdiction. Therefore, the court was without jurisdiction unless such is given by Section 19 of the Act of 1924.

Section 19 is expressly limited and confined, by its terms, to a matter "of disagreement as to *claim under contract of insurance* between the Bureau and any person or persons claiming thereunder." Here, the claim is not under a con- [fol. 86] tract of insurance but the claim is to have insurance reinstated, which plaintiff himself alleges has lapsed. While such a reinstated contract of insurance is connected with and, in a sense, based upon the earlier contract of insurance, yet, that earlier contract has ceased to have existence and validity and the contract, if reinstated, becomes a new contract. Judge Van Valkenburgh, speaking for this court, in Stevens v. United States (opinion filed December 14, 1928), stated, in speaking of a similar reinstated contract, that "the reinstatement made brought into existence a new contract between the parties." Therefore, a claim to a right to reinstate such a contract of insurance which has lapsed is not a "claim under contract of insurance between the Bureau and any person or persons claiming thereunder," within the meaning of Section 19.

As the subject matter of this action does not fall within Section 19 of the Act of 1924, and as the petition herein does not allege facts nor even generally charge that the action of the Director in rejecting the application for reinstatement was wholly without evidence, wholly dependent upon a question of law or clearly arbitrary or capricious, we think the trial court was without jurisdiction and the judgment should be reversed with instructions to dismiss the petition for lack of jurisdiction.

[fol. 87] In United States Circuit Court of Appeals, Eighth Circuit

No. 8082

United States of America, Plaintiff in Error,

vs.

Robert G. Meadows

In Error to the District Court of the United States for the District of Colorado

Judgment—Mar. 21, 1929

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Colorado, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed without costs to either party in this Court.

And it is further ordered by this Court that this cause, be, and the same is hereby, remanded to the said District Court with instructions to dismiss the petition for lack of jurisdiction.

[fol. 88] In United States Circuit Court of Appeals

[Title omitted]

Petition for Rehearing—Filed April 22, 1929

The appellee above named respectfully petitions the Court to recall and set aside the opinion heretofore filed herein,

and the order, if any, entered thereon, and to grant a rehearing of this cause. For the grounds of such petition, he respectfully urges that this Honorable Court has inadvertently committed error to his manifest prejudice in the following respects, viz.:

[fol. 89] 1. In holding that the court below was without jurisdiction to hear and determine this cause.

2. In holding that the judgment of the court below should be reversed with instructions to dismiss the petition for lack of jurisdiction.

3. In holding that the subject matter of this action does not fall within Section 19 of the World's War Veterans' Act (Act of March 4, 1925, 43 Statutes, 1302).

4. In holding that the petition should be dismissed for failure to charge an action on the part of the director of the Veteran's Bureau as would give the court jurisdiction.

Wherefore your petitioner prays that a rehearing of this cause be granted to the end that said errors may be corrected and the judgment of the court below affirmed.

Respectfully submitted.

S. R. Owens, Lowell D. Hunt, Jean S. Breitenstein, Attorneys for Appellee.

[fol. 90] CERTIFICATE OF COUNSEL

The undersigned, one of the attorneys for the appellee, petitioner herein, certifies that in his opinion the above petition is well founded and is not filed for the purpose of delay.

S. R. Owens, Attorney for Appellee.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—May 28, 1929

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Defendant in Error.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

[fol. 91] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 92] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 6, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,400. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 269. Robert G. Meadows, petitioner, vs. The United States of America. Petition for writ of certiorari and exhibit thereto. Filed July 29, 1929. File No. 34,400.